Church Law and Church Order in Rome and Byzantium

A COMPARATIVE STUDY

Clarence Gallagher

Birmingham Byzantine and Ottoman Monographs
Volume 8

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About the volume

This book presents a comparative study of church order in the East and West of the Christian world. It deals with the development of canon law from the 6th century, the time of Dionysius Exiguus and John Scholastikos, up to the period of Balsamon and Gratian. While the focus is upon Rome and Constantinople, the author includes in his discussion the churches under Islamic rule, in Syria and Persia, and describes the beginnings of Slavonic canon law in Moravia. The issues of church government, the discipline of the clergy (married or celibate), and the question of divorce and re-marriage are key themes. By illustrating how these were faced in the canon law of the Christian churches of late antiquity and the earlier Middle Ages, the book highlights questions of unity and diversity within the Christian tradition.

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For Mary

Birmingham Byzantine and Ottoman Monographs

Volume 8

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Church Law and Church Order in Rome and Byzantium

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A Comparative Study

Clarence Gallagher SJ

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Abbreviations

AAS	*Acta Apostolicae Sedis.*
BH	*Nomokanon* of Bar Hebraeus. A. Mai (editor), *Ecclesiae Antiochenae Syrorum Nomokanon a Gregorio Abulpharagio Bar Hebraeo compositus et a Iosepho Aloysio Assemano in Latinam linguam conversus, Scriptorum Veterum Nova Collectio* (Rome 1838), vol. X, Part II, 3–268.
BMCL	*Bulletin of Medieval Canon Law.*
CCEO	*Codex Canonum Ecclesiarum Orientalium* (Rome 1990).
CIC	*Codex Iuris Canonici* (Rome 1983).
CJ	*Corpus Iuris Civilis,* Volumen II: *Codex Iustinianus*, edited by Paul Krueger, 14th edition (Dublin/Zürich 1967).
CSC	*Collection of Synodical Canons* by Ebedjesus. A. Mai (editor), *Ebediesu Metropolitae Sobae et Armeniae Collectio Synodicorum Canonum ex Chaldaicis Bibliotechae Vaticanae codicibus sumpta et in Latinam linguam translata ab Aloysio Assemano*, in *Scriptorum veterum nova collectio,* vol. X (Rome 1838), Syriac text: 169–360; Latin translation: 3–168.
d.a.c.	*dictum ante canonem*; for Gratian's comment preceding a canon.
d.p.c.	*dictum post canonem*; for Gratian's comment following a canon.
DDC	R. Naz (editor), *Dictionnaire de droit canonique* (Paris 1935–1967).
DEC	Norman P. Tanner (editor), *Decrees of the Ecumenical Councils* (London and Washington 1990).
DHGE	*Dictionnaire d'histoire et géographie ecclésiastique* (Paris 1912–.).
FD	False Decretals. J. Merlin (editor), *Isidori Mercatoris Decretalium Collectio,* in PL, vol. 130, 1–1178.
Gratian	Gratian, *Concordia Discordantium Canonum.*
JTS	*Journal of Theological Studies.*
Mansi	Giovanni Domenico Mansi (editor), *Sacrorum Conciliorum nova et amplissima collectio*, 60 vols (Florence 1759ff).
MGH	*Monumenta Germaniae Historica* (Hannover and Berlin 1826–).
MMFH	*Magnae Moraviae Fontes Historici* (Prague – Brno 1971).
Novellae	R. Schoell and G. Kroll (editors), *Corpus Iuris Civilis, Volumen III: Novellae* (Dublin – Zürich 1972).
NCE	*New Catholic Encyclopedia* (New York 1967).
ODB	*Oxford Dictionary of Byzantium* (New York and Oxford 1991).
ODCC	E. A. Livingstone (editor), *Oxford Dictionary of the Christian Church*, 3rd edition (Oxford 1997).
OEJ	*Order of Ecclesiastical Judgments* by Ebedjesus. J.-M. Vosté (editor), *Ordo Iudiciorum Ecclesiasticorum d'Ebedjésus de Nisibe. Codificazione Canonica Orientale. Fonti.* Serie II, Fascicolo. XV (Vatican 1940).
Percival	Percival, H. R. (editor), *The Nicene and Post-Nicene Fathers. Second Series, Volume XIV. The Seven Ecumenical Councils of the Undivided Church. Their Canons and Dogmatic Decrees together with the Canons of all the Local Synods which have received Ecumenical Acceptance* (Edinburgh – Michigan 1991).
PG	J. P. Migne (editor), *Patrologia Graeca,* 162 vols (Paris 1857–1866).
PL	J. P. Migne (editor), *Patrologia Latina*, 221 vols (Paris 1844–1864).
RDC	*Revue de droit canonique.*
RP	G. A. Rhalles – M. Potles (editors), Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων, 6 vols (Athens 1852–1859).

Preface

This book has its origin in the Martin D'Arcy Memorial Lectures I was invited to give at Campion Hall, Oxford, in Hilary Term 1997. The idea of giving the lectures on the particular theme I have chosen came to me from reading an excellent book, written many years ago, by Sir William Holdsworth. The book was entitled *Some Makers of English Law*[1] and in the preface the author gave this explanation of what he was attempting to do:

> My two objects are, first to give some account of the most important of the men whose work entitles them to be reckoned among the Makers of English Law, and, secondly, so to connect their biographies with the general history of law that the book will be a short biographical history of English Law. I hope that it will be a useful companion to books on the history of legal institutions and on the history of the sources and literature of the law.

In this book I have attempted something similar in the field of canon law. I have examined the work of a few outstanding canonists, explained what they did and why they did it, indicating at the same time the contribution they made to the development of canon law. In linking the biographies of these canonists with the general history of church law, the book brings out the important influence that individuals had on the direction in which canon law developed.

The comparison between the Eastern Churches and the Latin Church in the West throughout the first millennium of Christianity shows in a striking way both the similarity and the diversity of canonical traditions within the Church. In the Decree on Ecumenism, the Second Vatican Council urged all who were interested in the restoration of full communion between the Churches of the East and the Catholic Church to give due consideration to 'The origin and growth of the Eastern Churches, and to the character of the relations which obtained between them and the Roman see before separation'.[2] When the Eastern Catholic Churches were being discussed at the Council, it was decreed that 'in keeping with the Church's very ancient tradition, the patriarchs of the Eastern Churches are to be attended with special honour' and that 'their rights and privileges be restored in accordance with the ancient traditions of each Church and the decrees of ecumenical synods'. The decree went on immediately to clarify what was meant by the rights and privileges it had mentioned. They were the rights and privileges that were in force when the Churches were still in communion with each other.[3] Just what were these ancient rights and privileges

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[1] Sir William Holdsworth, *Some Makers of English Law* (Cambridge 1938).

[2] The Second Vatican Council, *Decree on Ecumenism*, n. 14, DEC, vol. II, 916.

[3] 'Secundum antiquissimam Ecclesiae traditionem, singulari honore prosequendi sunt Ecclesiarum Orientalium Patriarchae, quippe qui suo quisque patriarchatui tamquam pater et caput prae-

'which were in force at the time of the union between East and West'? The comparative study of some of the most influential canonical collections used in the East and in the West throughout the first millennium should shed some light on how these rights and privileges were exercised in the united Church, and helps us to see how the Eastern patriarchs led their respective Churches and how the collegiality of the bishops was exercised in practice at various levels of church administration. What becomes clear is the diversity that existed within the Church.

In a recent encyclical letter, *Ut unum sint*, on the importance of ecumenical dialogue, Pope John Paul II invited all who call themselves disciples of Christ to redouble their commitment to achieving the full unity of all Christians; and he made the following statement:

> Whatever relates to the unity of all Christian communities clearly forms part of the concerns of the primacy... I am convinced that I have a particular responsibility in this regard, above all in acknowledging the ecumenical aspirations of the majority of Christian communities and in heeding the request made to me to find a way of exercising the primacy which, while in no way renouncing what is essential to its mission, is nonetheless open to a new situation.[4]

The examination of the canonical collections that were used throughout the first millennium illustrates how the Roman primacy was exercised in that period. It shows clearly that unity in the faith did not entail uniformity in discipline. Diversity in unity was acceptable. Perhaps such a study of earlier canonical practice could throw light on the direction in which the Church should move in the third millennium and provide some help in answering Pope John Paul's desire to heed the request made to him to exercise the primacy in a way that is open to the new situation that now presents itself.

In the same encyclical letter, *Ut Unum Sint*, the Pope declared that 'legitimate diversity is in no way opposed to the Church's unity but rather enhances her splendour and contributes greatly to the fulfilment of her mission'.[5] In 1976 Cardinal Ratzinger made the following statement:

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sint. Ideo statuit haec Sancta Synodus, ut eorum iura atque privilegia instaurentur, iuxta antiquas traditiones uniuscuiusque Ecclesiae et Synodorum Oecumenicarum decreta. ... Haec autem iura et privilegia sunt illa, quae tempore unionis Orientis et Occidentis viguerunt, etsi ad hodiernas conditiones aliquantulum aptanda sint'. *Decree on the Eastern Catholic Churches*, n. 9, DEC, vol. II, 903. The sources cited for this paragraph are the following: canon 6 of the First Council of Nicaea (325); canons 2 and 3 of the First Council of Constantinople (381); canons 9 and 28 of the Council of Chalcedon (451); canons 17 and 21 of the Fourth Council of Constantinople (869); canons 5 and 30 of the Fourth Lateran Council, and the *Decretum pro Graecis* of the Council of Florence (1439).

[4] Encyclical letter, *Ut unum sint*, 25 May, 1995, par. 95.

[5] *Ut Unum Sint*, par. 50.

> Rome need not require from the East more of a doctrine of the primacy than was formulated and lived in the first millennium. When, on July 25, 1967, Patriarch Athenagoras addressed the Pope, visiting the Phanar as Peter's successor, the first in honour among us, who presides in charity, this great church leader was expressing the essential content of the declarations of the first millennium on the primacy; and Rome need not require more.[6]

In this book I deal only with canonical collections and I am fully aware that this is only one aspect of the Church's life, and not the most important one. I begin with a discussion of two key sixth-century canonical collections: the *Dionysiana*, compiled by Dionysius Exiguus in Rome towards the beginning of the sixth century, and the *Synagoge in Fifty Titles*, produced by John Scholastikos, from Antioch, who was appointed Patriarch of Constantinople by Justinian in 565. These two collections constituted the foundation for the study and development of canon law in the Western Church and in the Church of Constantinople. All later collections were built on the work of these two renowned canonists. I then move on to the ninth century and compare the edition of the Greek *Nomokanon in Fourteen Titles* that was published in 882, in Constantinople, while Photios was Patriarch, with the Western canonical collection now known as the Pseudo-Isidorian Decretals (c. 845–852). This collection was never officially promulgated by any Western church authority but I have chosen to discuss it here both because it clearly expressed the direction in which Western (Latin) canon law was moving at that time and because of the decisive influence this collection had on later Latin canon law. In the third chapter I remain in the ninth century and discuss the work of the two great Apostles of the Slavs, Saints Cyril and Methodios, in laying the foundations of the Slavonic Church. St Methodios made a Slavonic version of the Greek *Synagoge in Fifty Titles* that became the foundation for later developments in the Slavonic Church. In the fourth chapter and the fifth I move on to the twelfth century and compare the work of the two most prominent canonists of the period. In the *Concordia Discordantium Canonum* (c. 1141) Gratian, in Bologna, provided a comprehensive summary of the canonical tradition of the Western Church for the first millennium – the *ius antiquum* – that would form the foundation for and greatly influence the subsequent development of canon law in the Latin Church. Theodore Balsamon, in his Commentaries on the *Nomokanon in Fourteen Titles*, (c. 1170) gave an authoritative and comprehensive account of the canon law as this had developed in the Church of Constantinople. Part II of the *Nomokanon*, the chronological collection of canons, remains to this day the *ius vigens* for the Greek Orthodox Church.

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[6] 'Die ökumenische Situation – Orthodoxie, Katholizismus und Reformation,' *Theologische Prinzipienlehre* 209, quote by John P. Galvin, 'Papal Primacy in Contemporary Roman Catholic Theology', *Theological Studies* 47 (1986), 664.

Having discussed the development of the canon law in the Latin Church of the West and in Constantinople, I went on to ask what happened to the other three ancient patriarchates of the East, Alexandria, Antioch and Jerusalem, the other members of the Pentarchy. These were, of course, over-run by Islam in the seventh century, but Churches continued to exist and grow under Islam. I thought that it would be both interesting and instructive to go outside the West and the Roman or Byzantine Empire and see how canon law had developed in those Eastern Churches that had continued to flourish and expand under Islamic domination, in Syria and Persia. In the sixth chapter, therefore, I discuss the work of two outstanding canonists of these Churches: the *Nomokanon* of Bar Hebraeus, produced for the Syrian Orthodox Church in the second half of the thirteenth century, but which preserves the canonical traditions of the first millennium, and the two canonical collections compiled by 'Abhdîšô' bar Bêrîkhâ, better known in the West as Ebedjesus, 'the greatest writer among East Syrians in the second millennium'.[7] A bishop of the Assyrian Church of the East, Ebedjesus was Metropolitan of Nisibis from 1291 to 1318. He left a clear account of the canonical traditions of the Church of the East in two important works: the *Collection of the Synodical Canons*, (often referred to as the *Nomokanon 'Abhdîšô'*), and *The Regulations of Ecclesiastical Judgments and Laws*. These Syriac collections show how these Churches were administered under Islam and how they were able to preserve their own distinctive ecclesial traditions.

What follows is a book about the development of canon law in the first millennium of Christianity: in the West and in Constantinople, in Syria and in Persia. I discuss the self-understanding of the Churches as this is reflected in their law-books. The theme that binds the chapters together is the parallel discussion of three issues: the constitution and governance of the Church (monarchical, patriarchal/imperial, synodical), the discipline of the clergy (married or celibate) and the question of divorce and re-marriage. By taking these three topics and illustrating how historically they were faced in the canon law of the principal Christian Churches, I try to highlight precisely the unity and the diversity within the different branches of the Church in the first millennium. Finally, I provide a brief summary of some conclusions that I suggest may be drawn from this comparative study of canon law in the East and in the West. Reflecting on how these Churches developed their own canonical discipline and went their separate ways might provide some guidance on how 'Sister Churches' might possibly act in the third millennium, when diversity in administration and in discipline need not be seen as incompatible with unity in the Christian faith. From this point of view the book can be seen as a contribution to the literature on ecumenism.

[7] Arthur Vööbus (editor), *The Canons Ascribed to Maruta of Maipherqat and Related Sources* (Louvain 1982), xv.

I have used only printed editions of the collections discussed in this book. There is no critical edition of the *Dionysiana,* so I have used C. Justel's edition of 1628, as reproduced in PL, vol. 67. For the compilation of John Scholastikos, there is the excellent critical edition by V. Beneševič (Munich 1937). The most recent and most satisfactory edition of the *Nomokanon in XIV Titles* is that produced by J. B. Pitra in his *Iuris ecclesiastici Graecorum historia et monumenta,* vol. II (Rome 1864–1868), but I have also made use of RP, vol. I (Athens 1852). For reasons explained in Chapter Two I have used J. Merlin's 1524 edition of the False Decretals, as printed in PL, vol. 130 rather than that published by P. Hinschius in 1863.[8] For the *Nomokanon* of Methodios there is the fine edition in Slavonic, Czech and Greek in MMFH, vol. 4 (Prague – Brno 1971). E. Friedberg's edition of Gratian's *Concordia Discordantium Canonum* (Leipzig 1879) is the best available for the present. For Theodore Balsamon's commentaries on the canons I have used both RP, vols II–IV (Athens 1852–1854) as well as PG, vols 137 and 138. I refer also to PG, vol. 104 for Balsamon's commentary on the *Nomokanon,* since PG is available in most theological libraries. For the *Nomokanon* of Bar Hebraeus I have had to make use of A. Mai's edition with J. A. Assemani's Latin translation (Rome 1838), while taking the precaution of getting important passages checked for accuracy. Also for the *Collection of Synodical Canons* by Ebedjesus I have used A. Mai's 1838 edition with the Latin translation by J. A. Assemani, whereas for the *Order of Ecclesiastical Judgments,* there is the fine edition and Latin translation by J. M. Vosté (Rome 1940).

Following the example of the ODB, Greek terms and names have been transliterated, unless there is a traditional latinized or anglicized from.

In conclusion, I would like to thank all those who encouraged me in this project: in particular, Dr Joseph Munitiz, S.J., who invited me to give the Martin D'Arcy Lectures and even suggested the topic, Dr Sebastian Brock, Dr Robert Ombres, O.P. and Dr Gerard McKay, all of whom made very helpful suggestions. I am also most grateful to Dr John Smedley of Ashgate Publishing House for his encouragement. However, I owe a special debt of gratitude to two friends. The first is Dr Robert Butterworth, who with great patience read through the manuscript several times carefully and preserved me from many inaccuracies. The other is Jarosław Dziewicki, managing editor of *Orientalia Christiana Periodica* at the Oriental Institute in Rome, who with meticulous care prepared the manuscript for publication in such a professional way. Their generosity has been outstanding and I am most grateful.

[8] See D. Jasper and H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington 2001), 154–159.

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CHAPTER ONE

Dionysius Exiguus and John Scholastikos: Rome and Constantinople in the Sixth Century

I begin by making a comparison of the canonical collections compiled by two sixth-century canonists: the *Dionysiana* by Dionysius Exiguus in Rome and the *Synagoge in Fifty Titles* by patriarch John III Scholastikos in Constantinople. It is particularly appropriate that a study of this kind should begin with these two men. First of all, each of them laid the foundations for a systematic study of canon law in Rome and in Constantinople respectively. Secondly, both men were outstanding canonists who made distinguished, not to say decisive, contributions to the development of church law. The collections they compiled became the foundation for most later canonical collections in their Churches. Thirdly, the law-books produced by them provide an interesting picture of the structure and discipline of the Church in Rome and in Constantinople in the sixth century. These early canonical collections provide a clear picture of the common law of the Church in the mid-sixth-century and they indicate the main concerns of that law. In the comparison of the two collections I pay particular attention to three specific questions: church government, marriage legislation and clerical celibacy. It also happens to be the case that the sixth century is a particularly interesting and important century from the point of view of relations between Rome and Constantinople.

Rome at the beginning of the sixth century[1]

At the beginning of the sixth century the city of Rome and the whole of Italy had been conquered by the Ostrogoths and was ruled by Theoderic (ruler in Italy, 493–526). Having made peace with the Emperor Zeno in Constantinople, Theoderic governed Italy from Ravenna. He governed wisely, restored prosperity and encouraged arts and letters. Although he himself was an Arian, he was very tolerant of Catholics and was reluctant to interfere in church matters. With the support of the senatorial aristocracy, the traditional Roman forms of government were kept intact and Romans remained in charge of the magistrature. Military control was kept firmly in the hands of the Goths. Theoderic's reign saw a period of peace and prosperity in Italy with the restoration of old build-

[1] For an up-to-date and well-documented study of Theoderic, see John Moorhead, *Theoderic in Italy* (Oxford 1992).

ings and the construction of new monuments, particularly in Ravenna.[2] He had a great admiration for Greco-Roman culture. Cassiodorus, for example, the senator, was quaestor and secretary to Theoderic and in this position worked for the reconciliation between the conquered Romans and the 'barbarian' Ostrogoths.

When Dionysius came to Rome from Constantinople towards the end of the fifth century, the Church was experiencing its first ever schism between Rome and Constantinople. For years there had been serious divisions within the Church in the Eastern part of the Roman Empire. Those who sympathized with the teaching of Nestorius formed one group, which was very numerous in East Syria and Persia. Nestorius, patriarch of Constantinople (428–431), had been condemned at the Council of Ephesus (431), accused of teaching that there were two separate persons in the Incarnate Christ (the heresy called 'Nestorianism').[3] Another group was formed by those who could not accept the terminology of Chalcedon – the teaching that in Christ there is one Person in two Natures. These were called 'Monophysites' by their opponents because they held to the expression 'one nature' as this had been used by St Cyril of Alexandria, but the label 'Monophysite' is misleading because it gives the impression that they agreed with the teaching of Eutyches of Constantinople, which they rejected. They professed to be faithful to St Cyril of Alexandria, according to whom, in Christ there was μία φύσις τοῦ Θεοῦ λόγου σεσαρκωμένη (one incarnate nature of the Word of God).[4] Cyril was clearly using the word φύσις in a way that differed from the way it was later used in the Chalcedonian definition. His followers were very numerous in Western Syria and in Egypt. The Church in Rome and the Church in Constantinople accepted the teaching of Chalcedon and so, in this respect, were divided from their Christian brethren in Western Syria and in Egypt.[5]

The Emperor Zeno, in an attempt to restore unity within the Empire, encouraged Akakios, patriarch of Constantinople (472–489), to produce a doctrinal statement that would be acceptable to all and so heal the divisions between the Chalcedonians and the 'Monophysites'. Akakios accepted the chal-

[2] The magnificent mosaics of the basilica of S. Apollinare Nuovo, the Arian baptistery and the mausoleum were produced in Ravenna during Theoderic's reign. See J. Moorhead, *Theoderic in Italy*, 142ff. For a summary of the continuity in the administration, see H. Chadwick, *Boethius. The Consolations of Music, Logic, Theology and Philosophy* (Oxford 1984), 6–16.

[3] There was never such a thing as the 'Nestorian Church'. Sebastian Brock has demonstrated this point convincingly in 'The "Nestorian Church": a Lamentable Misnomer', *Bulletin of the John Rylands Library* 78 (1996), 22–35. This question will be taken up again in Chapter Six, in relation to the Church to which Ebedjesus belonged.

[4] It would, therefore, be less misleading to refer to these followers of Cyril as 'Miaphysites'. This point will be discussed more fully in Chapter Six with relation to Bishop Bar Hebraeus, the distinguished canonist who held high authority in this Church in the thirteenth century.

[5] How the Syrian Orthodox Church and the Assyrian Church of the East developed as separate bodies from the Chalcedonian Churches will be discussed more fully in Chapter Six.

lenge and drew up a christological statement of belief that, while affirming that Jesus Christ is truly God and truly man, avoided the terminology of Chalcedon that had caused the difficulties. The document was formally promulgated by the emperor in 482. It was an instrument of imperial authority addressed to the Christians of Egypt. It became known as 'Zeno's Edict', and later as the *Henoticon*, and was sent to all the bishops in Alexandria, Egypt, Libya and Pentapolis. The *Henoticon* quotes from the first three ecumenical councils and affirms the consubstantiality of Christ with God and man, but it avoids the Chalcedonian use of the terms 'nature' and 'person'.[6] The *Henoticon* was unacceptable to the 'Monophysites' in Egypt – the very people it had been drawn up to reconcile. In Rome it was taken as a clear denial of the Council of Chalcedon's teaching and the rejection of the *Tomus* of Leo the Great. Pope Felix III, therefore, in 484, wrote a letter of protest to Constantinople and, at a synod held in Rome that same year, patriarch Akakios was excommunicated. The reply of Akakios was to remove the name of the bishop of Rome from the diptychs.[7] The first schism between Rome and the patriarchate of Constantinople had begun. It is known as the Acacian Schism and was to last for the next thirty-five years (484–519).[8] Zeno's attempt at reconciliation had resulted in total disaster, with his Empire more divided than ever.[9]

This was the state of affairs when the monk, Dionysius Exiguus, came to Rome towards the end of the fifth century. Little is known about the personal life and origins of Dionysius. In the preface to his canonical collection he refers to himself as 'exiguus', but it is not at all certain what this epithet is meant to convey.[10] For the little we do know about him we are dependent on a few paragraphs in praise of him by his friend Cassiodorus. Flavius Magnus Aurelius Cassiodorus (485–580), statesman and scholar, belonged to an aristocratic Roman family and became consul in 514. He would have been an important

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[6] For the text of the *Henoticon*, see PG, vol. 86, cols 2620–2625. An English translation is given in Aloys Grillmeier, *Christ in Christian Tradition* (London 1975), vol. 2, Part One, 252–253.

[7] The liturgical diptychs were lists of names of the living and of the dead that were proclaimed aloud by the deacon during the celebration of the Greek liturgy. Being excluded from the list was a sign of excommunication.

[8] Patriarch Akakios died in 489. His successors were not at all hostile to Chalcedon, but the bishops of Rome insisted that the name of Akakios be removed from the liturgical diptychs, which today seems somewhat intransigent. The schism was finally brought to an end in 519 due to the intervention of the new emperor, Justin, with Pope Hormisdas. See A. Grillmeier, *Christ in Christian Tradition*, 263–266.

[9] 'Schisms everywhere were the immediate result of the Emperor's attempt to end the conflict about Chalcedon by a theologically pragmatic compromise.' A. Grillmeier, *Christ in Christian Tradition*, 257. See this same work for an up-to-date discussion of the whole question of the *Henoticon*, 247ff.

[10] PL, vol. 67, col. 139. Probably he referred to himself as *exiguus* because he was a monk and this usage was common among monks as a sign of humility.

person to have as a friend in Rome at that time. Dionysius was very highly thought of by Cassiodorus who described him in his *Institutiones* as follows:

> The Catholic Church even today produces distinguished men, gloriously illustrious for their sound doctrine. In our own day there was the monk, Dionysius, Scythian by race, but thoroughly Roman in his way of life. He was very learned in both languages and he displayed in his behaviour the tranquillity that he had read in the books of the Lord. He had studied the divine Scriptures with such a thirst for knowledge and had understood them so well that, when questioned on any topic, he had ready at once a suitable answer. He studied logic along with me and, by the grace of God, he spent very many years of his life in glorious and exemplary teaching. I feel ashamed to talk about qualities in a colleague that I am unable to find in myself. For he was a person who combined simplicity with deep wisdom, humility with learning, moderation in speech with eloquence. Without a doubt he was worthy of conversing with kings, yet he never considered himself to be above even the lowest of the servants. May he, who used to pray with us, intercede for us so that, supported here by his prayer, we may now be helped through his merits. At the request of Stephen, Bishop of Salona,[11] with brilliance and style, he made a collection of church canons from the original Greek which displays a clarity and skill in keeping with his character. These canons are today in frequent use by the Roman Church. You also should study them diligently lest you are seen to be culpably ignorant of such salutary rules.[12]

So he was a monk from Scythia,[13] who came to Rome from Constantinople. At this time there was an active group of Scythian monks in Constantinople from the Danube delta in the Dobrudja.[14] Vitalian, army commander under Emperor

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[11] Salona was a city in Dalmatia, on the eastern coast of the Adriatic.

[12] My translation from: 'Generat etiam hodieque catholica Ecclesia viros illustres, probabilium dogmatum decore fulgentes. Fuit enim nostris temporibus et Dionysius monachus, Scythus natione, sed moribis omnino Romanus, in utraque lingua valde doctissimus, reddens actionibus suis quam in libris Domini legerat aequitatem. Scripturas divinas tanta curiositate discusserat atque intellexerat, ut, undecunque interrogatus fuisset, paratum haberet competens sine aliqua dilatione responsum. Qui mecum dialecticam legit,et in exemplo gloriosi magisterii plurimos annos vitam suam Domino praestante transegit. Pudet me de consorte dicere, quod in me nequeo reperire. Fuit enim in illo cum sapienta magna simplicitas, cum doctrina humilitas, cum facundia loquendi parcitas; ut in nullo se vel extremis famulis anteferret, cum dignus esset regum sine dubitatione colloquiis. Interveniat pro nobis, qui nobiscum orare consueverat, ut cujus hic sumus oratione suffulti, ejus possimus nunc meritis adjuvari. Qui petitus ab Stephano, episcopo Salonitano, ex Graecis exemplaribus Canones ecclesiasticos moribus suis pares, ut erat planus atque disertus, magna eloquentiae suae luce composuit, quos hodie usu celeberrimo Ecclesia Romana complectitur. Hos etiam oportet et vos assidue legere, ne videamini tam salutares ecclesiasticas regulas culpabiliter ignorare'. R. A. B. Mynors (editor), *Cassiodori Senatoris Institutiones* (Oxford 1963), chapter XXIII, 62–63.

[13] Scythia was the region north and north-east of the Black Sea, roughly equivalent to modern Romania.

[14] The Roman province of Scythia Minor on the north and north-east coast of the Black Sea, more or less the modern Romania. Many people here would have been bilingual, speaking both

Anastasius, was also a Goth from the same region. Dionysius may well have been a member of this group of monks. He seems to have arrived in Rome around 497. He states in the preface to his collection of papal decretals that he never knew Pope Gelasius personally, but he expresses great admiration for that pope.[15] Pope Gelasius died in November, 496. It has been suggested that it was Pope Gelasius who invited Dionysius to come to Rome in the first place to work in the Roman Curia because of his mastery of Latin and Greek. From what we know of the character of Gelasius, the dominant figure in the Roman Curia in the eighties and nineties of the fifth century, even before he was elected to the papacy, this seems not unlikely.

He was received at the monastery of St Anastasius, which housed the papal chancery as well as the papal archives. The head of this monastery was at that time the priest Julian, cardinal of St Anastasius, to whom Dionysius later dedicated his collection of papal decretals. It is thought by some historians that Dionysius was put in charge of the papal archives by the pope and that it was in this capacity that he produced his canonical collections. We do not hear of him after 526, and he must have died before 555, when Cassiodorus, writing his *Institutiones,* as we have just seen, refers to Dionysius as already dead. Some think that he may have retired to Vivarium, Cassiodorus's monastery in Calabria. Dionysius was a fine scholar in both Latin and Greek. Cassiodorus tells us that his command of these languages was such that he could translate at sight from one to the other in such a way that his listeners thought he was reading from a carefully prepared written translation.

> Dionysius also translated many other works from Greek into Latin which can be of use to the Church; he had such a facility in Latin and Greek that he would take in his hands any Greek books and put them into fluent Latin and again translate Latin books into the Attic tongue in such a way that you would think what flowed with such rapid fluency from his lips was what he had written down in front of him.[16]

Greek and Latin, since Scythia Inferior had become a Roman province in 29 B.C. See Nicolas Dura, 'Denys Exiguus (465–550): Précisions et correctifs concernants sa vie et son oeuvre', R. Coppola (editor), *Proceedings of the International Congress: The Meeting of Eastern and Western Canons* (Bari 1995), vol. 2, 86–100. On the Scythian monks, see H. Chadwick, *Boethius* (Oxford 1981), 185–190.

[15] Dionysius writes: 'Quantique sit apud Deum meriti beatus papa Gelasius, et nos qui eum praesentia corporali non vidimus, per vos alumnos ejus facilius aestimamus'. (How great before God is the merit of the blessed Pope Gelasius, even we, who have not seen him in person, can quite easily judge from you who were his pupils). PL, vol. 67, col. 231.

[16] 'Alia quoque multa ex Graeco transtulit in Latinum, quae utilitati possunt ecclesiasticae convenire; qui tanta latinitatis et graecitatis peritia fungebatur, ut quoscumque libros graecos in manibus acciperet, latine sine offensione transcurreret iterumque latinos attico sermone relegeret, ut crederes hoc esse conscriptum quod os eius inoffensa velocitate fundebat'. R. A. B. Mynors, *Cassiodori Senatoris Institutiones,* 63.

His knowledge of Greek was particularly important in the Rome of that time, since there were fewer and fewer there who knew any Greek. This praise of Dionysius by Cassiodorus shows that it was unusual for a person to be bilingual in Greek and Latin in the Rome of the early sixth century. There had in fact been a steady decline in Greek speakers since the fourth century. The ignorance of Greek in Rome and of Latin in Constantinople was a serious cause of misunderstanding between the two cities. This mutual ignorance of the languages had been the result of a gradual process. At the beginning of Christianity, knowledge of Greek was widespread both in the East and in the West. Greek was the language of the Scriptures and of the liturgy. The Eucharist in Rome continued to be celebrated in Greek until the second half of the fourth century. It was only when early Christian Latin was fully developed as a literary and biblical language that it was permitted to replace Greek as the sacral language for the liturgy. This happened towards the end of the fourth century. Writers of the calibre of St Hilary of Poitiers (315–368), St Ambrose (339–397) and St Augustine (354–430) produced a polished Christian literary Latin, and St Jerome (345–420) provided the Church in the West with an excellent Latin translation of the Bible. The foundations had been laid for the development of a Roman liturgical language and style. 'In this liturgical style, early Christian devotion, the Bible in its unique greatness, and ancient Roman *gravitas* were fused together to form a new creation that was to continue living and remain capable of life throughout the centuries'.[17]

This Latinization of the West resulted in a complete break in language between the Church in the West and the Eastern Churches, as the development of Christian Latin brought about a decline in the knowledge of Greek. Aristocratic families in Italy continued to cultivate Greek. St Ambrose, for example, who died in 397, had an excellent command of Greek and was able to quote freely from the writings of his Eastern contemporaries, such as St Basil and St Gregory Nazianzen. But this ability in both languages became less and less common. St Augustine, who was fifteen years younger than Ambrose, was more representative. He was a brilliant Latin writer and teacher of rhetoric but he did not learn much Greek until he was in his late forties.[18] When Cyril of Alexandria wrote to Pope Celestine about Nestorius, around the year 430, he was careful to have his letter translated into Latin, whereas Pope Celestine had to turn to John Cassian for help in understanding the Greek writings of Nestorius.[19] So when we come to the beginning of the sixth century, men like Dionysius,

[17] Christine Mohrmann, NCE, vol. 8, 415.

[18] Augustine tells us that Greek bored him to distraction just when he had begun to enjoy the Latin Classics. See Augustine, *Confessions*, I, xiii, 20. 'Augustine's failure to learn Greek was a momentous casualty of the Late Roman educational system: he will be the only Latin philosopher of Antiquity to be virtually ignorant of Greek'. Peter Brown, *Augustine of Hippo*, 2nd edition with a long epilogue (London 2000), 24.

[19] See P. Langlois, 'Decline of Greek Language in the West', NCE, vol. 6, 731–732.

Boethius and Cassiodorus, in their command of the Greek language, formed a minority in Rome. The very fact that Dionysius had to produce his translations is evidence of the decline of Greek in the West. By the end of the century, knowledge of Greek had almost disappeared. Gregory the Great, in comparison with his contemporaries in Rome, was highly educated and an accomplished rhetorician, yet the extent of his knowledge of Greek is a debated point.[20] Similarly in Constantinople, the knowledge of Latin declined. Latin remained for a time the official language of the courts and the imperial chancery, but during the fifth and sixth centuries these also were changed over to Greek. This language 'barrier' was to become an important factor in the gradual growing apart of the Greek East and the Latin West.[21]

Since Dionysius was a friend of the senator, Cassiodorus, it is likely that he moved in senatorial society in Rome. An intelligent and cultured Hellenist, he would have known the brilliant circle of Hellenists in the Roman Senate. We know that Cassiodorus had links with the senatorial family, the Anicii, – the family of Boethius, consul in 510, – who had relatives in the Eastern Empire. This family would have been very interested in healing the breach between Rome and Constantinople for both theological and political reasons. In such a reconciliation they would have seen some hope of political survival for the Roman Senate, in the middle, between the barbarian Goths and the Byzantine Orientals.[22] Dionysius came to Rome in the midst of the Acacian Schism we have just mentioned. This means that throughout much of the time he spent in Rome there was division between Rome and Constantinople. A number of authors claim that much of Dionysius' time and energy in Rome was spent precisely attempting a reconciliation.[23] Given the strained relations with Constantinople, it would have been particularly important at that time to have, in Rome, someone really competent in both Latin and Greek. Dionysius was just such a person. Moreover, Dionysius displayed an unusual interest in the Church in the East. Relations between Rome and Constantinople were frequent at that time

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[20] 'The extent of his knowledge of Greek has been much debated; it is unlikely to have been either negligible or sufficient for easy competence'. R. A. Markus, *Gregory the Great and His World* (Cambridge 1997), 36.

[21] See J. Daniélou and H. Marrou, *The First Six Hundred Years* (London and New York 1964), 329–334. The vitriolic correspondence between Emperor Michael III and Pope Nicholas I in 867 is indicative of the language situation at that time. Michael III dismissed the Latin language as 'barbarian and Scythic'.

[22] See F. De Marini Avonzo, 'Secular and Clerical Culture in Dionysius Exiguus' Rome', S. Kuttner and K. Pennington (editors), *Proceedings of the Sixth International Congress of Medieval Canon Law (1980)* (Vatican 1985), 83–92.

[23] See Gennadios Limouris, 'L'Oeuvre canonique de Denys le Petit', RDC, 38 (1988), 142: 'En réalité, toute l'oeuvre de Denys le Petit, et pas seulement sa collection canonique, n'a qu'un but: la réconciliation des Églises entre l'Orient et l'Occident.' Jacqueline Rambaud agrees with this judgment, in NCE, vol. 4, 487; as does A. Van Hove in *Prolegomena* (Mechelen-Rome 1945), 159.

and Dionysius would have known Constantinople well, both because he came from that region and because of the part he would have played in the christological discussions that had taken place with the Scythian monks in Rome.[24] Cassiodorus said of Dionysius that he had the great merit of opening to the West many treasures of Greek Christian literature, and he was referring, not only to his work as a canonist, but also to his translations of Greek writers. In fact, he translated a number of important Greek works into Latin; for instance, the Life of Pachomius,[25] which he addressed to a certain Roman lady, who may have been the sister-in-law of Boethius. Other translations by Dionysius include: the *De creatione hominis*, by St Gregory of Nyssa;[26] the *Oratio de Deipara* and the *Tome to the Armenians,* by Bishop Proclus of Constantinople.[27] He showed particular interest in the Church at Alexandria, since ten of the works attributed to him are connected with that Church. He seems to have been an enthusiastic follower of the theology of St Cyril of Alexandria, since he translated several of Cyril's works into Latin: a Letter to Nestorius and The Twelve Anathemas.[28] These translations demonstrate knowledge of Eastern Greek literature and the translator's determination to make this better known in the West. All this fits in with Cassiodorus's work at Vivarium, his estate near Naples, of preserving the writings of the Fathers for posterity.

Two other matters confirm the interest Dionysius had in fostering harmony between East and West. These are the settling of the long-standing dispute over the date of Easter and the introduction of what we know as the Christian Era. There had, for centuries, been disputes between the East and the West concerning the date on which Easter should be celebrated. We know that this question was discussed at the Council of Nicaea in 325 and that the Antiochene custom of following the Jewish manner of reckoning had been condemned, but no canon seems to have been promulgated on the question.[29] The Western Church followed a cycle of eighty-four years, whereas in the East there was a cycle of nineteen years. In his *Liber de Paschate* Dionysius proposed that the whole Church should agree to follow the paschal tables that had been drawn up by St Cyril of Alexandria.[30] With the acceptance by Rome of Dionysius' proposal to

[24] A group of Scythian monks had come from Constantinople to Rome in 519 and had discussions about the Council of Chalcedon in an attempt to resolve the difficulties that had arisen. See J. Moorhead, *Theoderic in Italy,* 204–206.

[25] *Vita Pachomii.* PL, vol. 73, cols 229–282. A critical edition of this has been published, with the Greek text and the Latin translation, by H. van Cranenburgh, *La Vie Latine de Saint Pachôme* (Brussels 1969). Chapter II of this edition, 28–48, contains a well-documented account of the life and work of Dionysius Exiguus by M. Mähler.

[26] PL, vol. 67, cols 347–408.

[27] PL, vol. 67, cols 407–418.

[28] PL, vol. 67, cols 9–18.

[29] See the long letter from the Council to the Church at Alexandria, DEC, vol. I, 4 and 19.

[30] *Liber de paschate,* PL, vol. 67, cols 483–514. See M. Mähler, *La Vie Latine de Saint Pachôme,* 44, who points out that the *Liber de Paschate* and the *Epistola de ratione Paschae,*

adopt the Alexandrian way of computing the date of Easter, a serious difference between Rome and Constantinople was removed.

Dionysius also introduced the present custom of dating events from the year of the birth of Jesus Christ. Until his time the chronology had been calculated either from the foundation of the city of Rome – *Ab Urbe Condita* – or from the persecution of the Emperor Diocletian (280 AD). Dionyisus persuaded the Roman authorities to abandon the practice of dating events by the name of a pagan emperor who had persecuted the Christians and to follow instead a system based on the year of Christ's birth, which he dated at 753 A.U.C. so that the first year of the Christian Era was 754 A.U.C. This mode of dating within a 'Christian Era' was adopted in England at the Synod of Whitby in 664 and it soon became very general in the Christian world.[31] It is clear that Dionysius was a prominent citizen in sixth-century Rome and highly thought of as an expert in the Greek language. He also wrote Latin well, as can be seen not only in his translations, but also in the prefaces to his translations. These are dedications to a variety of personages in the Rome of the early sixth century and they reveal not only Dionysius's mastery of the Latin language, but also the social circle in which he moved.[32]

The translation of the Greek canons into Latin

Dionysius is the first great canonist of the Western Church known to us by name. He has been called 'the father of canon law', because serious study of canon law became a practical possibility in the West only after Dionysius had provided the Latin Church with his accurate translation of the Greek conciliar canons and his collection of papal decretals. The *Dionysiana* was the first of its kind to gain widespread influence in the Latin Church and all subsequent Western canonical collections would be affected by it.

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constitute an appeal by Dionysius for the acceptance by Rome of the paschal cycle as this had been drawn up and recommended by the archbishops of Alexandria, Athanasius, Theophilus and Cyril.

[31] In fact, in his calculations Dionysius was between four and seven years too late.

[32] For example, the dedication of his new translation of the canons to Pope Hormisdas (514–523), F.Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande, I, Die Rechtssammlungen bis zur Mitte des 9. Jahrhunderts* (Graz 1956), 964. In this preface we are informed that it was the pope himself who commissioned the new translation. The dedicatory letter of his earlier translation of the canons is to Bishop Stephen of Salona (F. Maassen, *Geschichte der Quellen*, 960–961); the dedicatory letter of his translation of the papal decretals is to the priest Julian, who is clearly a priest of some standing in Rome (F. Maassen, *Geschichte der Quellen*, 962, and in PL, vol. 67, cols 231–232); his translation of the *De conditione hominis* by St Gregory of Nyssa is to the priest Eugippius, who was singled out by Cassiodorus as one of the outstanding priests of that time (PL, vol. 67, col. 345; Cassiodorus, *Institutiones,* Chapter xxiii (PL, vol. 70, col. 1138). See M. Mähler, *La Vie Latine de Saint Pachôme*, 47.

It used to be held that Dionysius produced his first version of the canons before the end of the fifth century, and it has been the common opinion that he made three versions of his translation of the Greek canons: one around the year 500, shortly after his arrival in Rome, then a second some time later, and then another version still later; of the third version all that remains is the preface. There are, however, sound reasons for thinking that almost all of Dionysius' work was done later in the century, in the pontificate of Hormisdas (514–523).[33] In the preface[34] he informs the reader that his reason for making the translation was the unsatisfactory nature of the existing Latin translation of the Greek canons – the translation now referred to as the *Compilatio Prisca*.[35] He explains that friends had asked him to produce a new Latin translation of the Greek canons. These friends were Stephen, Bishop of Salona, and 'our dearest brother Laurence'.[36] This first version is preserved in only two manuscripts, one in the Vatican Library,[37] and one in a Fulda manuscript now at Kassel, in Germany.[38]

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[33] 'L'existence de trois versions n'est qu'une simple probabilité; on peut aussi bien être en présence de trois copies du même texte, faites dans trois circonstances differentes, la dernière copie ayant été perdue', J. Rambaut, DDC, vol. 3, col. 1151. Rambaud thinks the most suitable date for the work is the pontificate of Hormisdas, since it would fit in well with that pope's successful attempt to resolve the difficulties between Rome and Constantinople.

[34] Laurence was offended by the confusion of the earlier translation – 'confusione credo priscae translationis offensus'. See preface to Dionysius' translation, PL, vol. 67, col. 141.

[35] On this older translation of the Greek canons, see A. Stickler, *Historia Iuris Canonici Latini. Institutiones Academicae. I Historia Fontium* (Rome 1950), 45. Although now somewhat dated, Stickler's book remains a very useful comprehensive treatment of the canonical collections of the Latin Church. It is being revised and updated by Brian Ferme. The first volume of this revision has already been published: Brian Edwin Ferme, *Introduzione alla Storia del Diritto Canonico. I. Il Diritto Antico fino al Decreto di Graziano* (Rome 1998). For an edition of this earlier *Prisca* collection of canons, see C. H. Turner, *Ecclesiae Occidentalis Monumenta Iuris Antiqua* (Oxford 1899–1939). See also C. H. Turner, 'The Versio called *Prisca*', JTS, vol. 30 (1929), 337–346.

[36] We are not told who this 'dearest brother Laurence' was. Some think that he might have been the anti-pope, the Archpriest Laurence,who opposed Pope Symmachus (498–514) and who died around 507. See J. Moorhead, *Theoderic in Italy*, 207; M. Mähler thinks that 'perhaps' this is the brother Laurence that Dionysius is referring to. See *La Vie de Pachôme*, 33. That the Laurentian schism in Rome between 498 and 506 was concerned with relations between Rome and the Eastern Churches seems certain, and Dionysius's work as a translator would seem to fit in well with the aims of the Laurentian party. See J. Moorhead, *Theoderic in Italy*, 114–135.

[37] Manuscript Pal. lat 577, 7th century. This has been edited by Adolf Strewe, *Die Kanonessamlung der Dionysius Exiguus in der Ersten Redaktion* (Berlin 1931). See also the edition by C. H. Turner in *Ecclesiae Occidentalis Monumenta Iuris Antiqua*. The second version has been published in PL, vol. 67, cols 139–316. The third version no longer exists, save for its preface, edited in F. Maasson, op. cit., 964–965. A more recent edition of the prefaces is to be found in F. Glorie (editor), 'Dionysii Exigui Praefationes Latinae Genuinae in variis suis translationibus ex Graeco', Scriptores 'Illyrici' Minores (Turnhout 1972), 27–81. For an English translation of the dedicatory letter to Pope Hormisdas, see R. Somerville and B. C. Brasington, *Prefaces to Canon Law Books in Latin Christianity* (Yale 1998), 47–48.

It would appear that Dionysius sent a copy of this, his first version, to another friend, cardinal Julian of St Anastasius, who was impressed by the quality of the work and urged Dionysius to produce a new edition.

This second version is the one that became common in the Western Church of the Middle Ages, and this is the edition that is under discussion in these pages.[39] Dionysius begins by providing a translation of the first fifty of the eighty-five *Apostolic Canons*. These are found at the end of Book VIII of the *Apostolic Constitutions*. It is clear that they do not go back to the time of the Apostles, but it is now generally agreed that they reflect, in a general way, the customs of the early centuries.[40] These are followed by 165 canons from seven councils that had been held in the Eastern empire in the fourth century: Nicaea I (325), Ancyra (314), Neocaesarea (before 325), Gangra in Paphlagonia (c.341), Antioch (c 330), Laodicea 345–365), Constantinople I (381); then twenty-seven canons from the Council of Chalcedon (451). To the canons of these early councils Dionysius added twenty-one canons from the Council of Sardica(343) as well as 138 canons which Dionysius attributes to the Council of Carthage of 419, and which preserved for the West the whole code of canons of the Church in North Africa.[41] This second version contains about 430 canons. By providing this new and accurate Latin translation of the Greek canons Dionysius made available to Rome and the Church in the West the canonical authorities that were regarded as the *ius vigens* by the Church in Constantinople. So it is not unlikely that one of the aims of Dionysius in producing this translation was to foster closer unity between the Greek Church and the Western Church. He

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[38] See K. Christ, 'Eine unbekannte Handschrift der ersten Fassung der Dionysiana und der Capitula e canonibus excerpta a. 813, in *Festschrift für Georg Leidinger*, edited by A. Hartmann (Munich 1930), 25–36.

[39] I am using the edition contained in PL, vol. 67 (Paris 1848), cols 149–316. This is an edition of the eighth-century *Dionysiana-Hadriana*, which contained a number of additional papal decretals to those compiled by Dionysius. These added decretals are contained in an Appendix added to the compilation of Dionysius, in PL, vol. 67, cols 313–346. See J. Gaudemet, *Les sources du droit de l'Église en occident du IIe au VIIe siècle* (Paris 1985), 136, n. 19.

[40] The *Apostolic Canons* (*Regulae Ecclesiasticae Sanctorum Apostolorum)* was a collection of eighty-five laws allegedly given to Pope Clement I by the Apostles. They were probably put together in Antioch towards the end of the fourth century and are concerned mainly with the duties of the clergy. They were regarded in the West as apocryphal and Dionysius translated only the first fifty of them. They were accepted as sources of church law in Constantinople and included in their official canonical collections. See J. Gaudemet, op. cit., 24–26.

[41] In his first version Dionysius had included canons from the Council of Carthage of 419. In his second recension he interpolated a large number of canons from earlier councils held at Carthage under Aurelius. Aurelius held the primatial see of Carthage from c.391 until his death in 427, and, under the influence of St Augustine, called a number of episcopal synods between 393 and 419. See J. Munier, *Concilia Africae A.345 – A.425* (Turnhout 1974); F. L. Cross, 'History and Fiction in the African Canons', JTS, NS 12, (1961), 227–247. As we shall see, this *Codex canonum Ecclesiae Africanae* later in the sixth century was translated into Greek and included in the *Synagoge* of John Scholastikos.

demonstrated how important the Eastern councils were for the whole Church and, in fact, his translation ensured that the canons of these early Eastern councils were accepted as the foundation for the development of canon law in the West.

Having successfully completed his versions of the Greek canons, Dionysius went on to produce another canonical collection of quite a different kind. To the collection of conciliar canons he added a selection of 'canons' from thirty-eight decretal letters of the bishops of Rome – from Pope Siricius (384) to Pope Anastasius II (d.498).[42] These decretal letters were the replies of the popes to questions sent to them by individual bishops concerning various points of law.[43] By making these papal replies to particular questions part of what was to become the general law-book for the Western Church, Dionysius took a step of enormous importance for the whole development of Western canon law. For the first time a collection of papal decisions, given for particular individuals in answer to their questions, was put forward as part of the general law of the Church and as having an authority similar to that of conciliar canons.

The method used by Dionysius is reminiscent of the principles that were to be found in the imperial constitution with which the Emperor Theodosius II commissioned his *Codex Theodosianus*, which was presented to the Senate in 438 AD. This would have been familiar to the senatorial circles in which Dionysius is known to have moved with his friend Cassiodorus. Perhaps it was this collection of imperial constitutions that gave him the idea of compiling a similar collection of papal decretals. Dionysius would have known all about the views of Pope Gelasius and his teaching on the double source of authority in the world – the authority of the Church and the authority of the State – the *auctoritas sacra pontificum* and the *regalis potestas* of his famous letter to the Emperor in Constantinople.[44] In fact, Dionysius does not include this particular letter in his collection of papal decretals, although he greatly admired Pope Gelasius, and there can be little doubt that Gelasius would have given his wholehearted approval to the inclusion of papal decretals in the *Corpus canonum*.

The collection is methodical and makes clear Dionysius' scholarship and meticulousness. The decretals are arranged in chronological order and divided

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[42] There is no obvious explanation as to why Dionysius chose to publish these particular 38 Decretal Letters out of the 460 we know existed at that time.

[43] A 'decretal' is a papal letter containing rulings on matters of canonical discipline.

[44] This letter, *Famuli vestrae pietatis*, was written in 494 by Pope Gelasius to the Byzantine Emperor, Anastasius I. It is a plain declaration of the Gelasian theory on the relation between Church and State: *'Duo quippe sunt, imperator auguste, quibus principaliter mundus hic regitur: auctoritas sacra pontificum et regalis potestas'*. ('There are two things, august emperor, by which this world is principally governed: the sacred authority of the pontiffs and the royal power'), PL, vol. 59, cols 41–47.

into numbered chapters or canons. In the preface to his collection of papal decretal letters, Dionysius explains what he has done as follows:

> I collected with what care and diligence I could the enactments of the former bishops of the apostolic see, and arranging them in order, I divided them up by means of suitable titles. In this way I could encompass within one numerical sequence however many precepts I found of individual pontiffs and could append to the end of this preface all of the titles. Translating the canons of the Fathers from the Greek some time ago, I ordered things in this way, which I recognized to have pleased you greatly.[45]

He puts some emphasis on the systematic order of his collections of canons and decretals.[46] The papal decretal letters that Dionysius included in his collection deal mainly with general discipline and encourage the observance of the 'sacred canons'. Some of them, however, give evidence of the deep interest that Dionysius had in the relations between Rome and Constantinople. We have already mentioned Dionysius' work on the date of Easter. Clearly this would have been in his mind when he included the Letter of Cyril of Alexandria to the Africans from the *Codex canonum Ecclesiae Africanae* on this subject and the decretal of Pope Innocent I, *Charitatis nostrae*, which fixed the date of Easter in 414, expressing the desire that the Churches should be united over this.[47] He also included a series of letters of Pope Innocent I which deal with Antioch as an apostolic see because founded by St Peter,[48] drawing attention to the importance of the presence of an apostle for a city to claim to be an apostolic see. He must have done so intentionally, given the controversy between Constantinople and Rome on this point that had gone on since the Council of Chalcedon promulgated its famous canon 28 which placed Constantinople, the 'New

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[45] From Dionysius' preface to his collection of papal decretals, in R. Somerville and B.C. Brasington, *Prefaces to Canon Law Books*, 48. The Latin text can be found in PL, vol. 67, col. 231: 'Praeteritorum sedis apostolicae praesulum constituta, qua valui cura diligentiaque collegi, et in quemdam redigens ordinem titulis distinxi compositis: ita dumtaxat ut singulorum pontificum, quotquot a me praecepta reperta sunt, sub una numerorum serie terminarem, omnesque titulos huic praefationi subnectarem eo modo, quo dudum de Graeco sermone patrum transferens canones ordinarem, quod vobis nimium placuisse cognoveram'.

[46] The canons selected by Dionysius from the papal decretals were as follows: fifteen canons from the letter of Pope St Siricius (385–389) to Bishop Himerius of Tarragona, in 385. (This is the earliest extant papal decretal letter); fifty-six canons from nineteen decretals of Innocent I (402–417); four canons from two letters of Zosimus (417–418); two canons from two letters of Pope Boniface I (418–422), along with Boniface's letter to the Emperor Honorius and the emperor's reply; twenty-two canons from two decretals of Pope Celestine I (422–432); forty-nine canons from seven decretals of Leo the Great (440–461); twenty-eight canons from one decretal of Gelasius (492–496); eight canons from a letter of Anastasius II (496–498) to EmperorAnastasios I, at Constantinople.

[47] *Charitatis nostrae officium*, addressed to Aurelius, Bishop of Carthage, (PL, vol. 67, col. 252: canon xl in the canons of Pope Innocent I).

[48] Canon xli of Pope Innocent I, in PL, vol. 67, cols 252–253.

Rome', second after Rome in dignity, taking precedence over Alexandria, Antioch and Jerusalem. The same primacy of Rome is affirmed by Pope Anastasius II to the emperor at Constantinople:

> So through my humble ministry the see of blessed Peter holds the primacy in the universal Church, just as it has always been committed to it by the Lord God.[49]

This letter is included by Dionysius in his collection. There are other decretal letters in his collection which reveal the interest Dionyius had in the Roman primacy question and, as we have noted above, about this very time there were Scythian monks from Constantinople in Rome negotiating the peace settlement. Dionysius would probably have been involved directly in these negotiations. The Emperor Justinian later made a statement about this which could appear as a sort of compromise on the emperor's part:

> Therefore we confirm that in accordance with the decisions of these councils the most holy pope of older Rome is the first of all priests, but the most venerable archbishop of Constantinople, the New Rome, should have second place after the holy apostolic throne of older Rome, having precedence, however, over all other thrones.[50]

This controversy might explain why Dionysius omitted the disputed canon 28 of Chalcedon from his canonical collection.[51] But he makes the same point about

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[49] 'Ita per ministerium meae humilitatis sedes beatissimi Petri in universali Ecclesia (sicut semper est) assignatum sibi a Domino Deo teneat principatum'. PL, vol. 67, col. 311.

[50] *Novella* 131, 'De ecclesiasticis titulis', (545 AD), Chapter II: ' Καὶ διὰ τοῦτο θεσπίζομεν, κατὰ τοὺς αὐτῶν ὅρους τὸν ἁγιώτατον τῆς πρεσβυτέρας 'Ρώμης πάπαν πρῶτον εἶναι πάντων τῶν ἱερέων, τὸν δὲ μακαριώτατον ἀρχιεπίσκοπον Κωνσταντινουπόλεως τῆς νέας 'Ρώμης δευτέραν τάξιν ἐπέχειν μετὰ τόν ἁγιώτατον ἀποστολικὸν θρόνον τῆς πρεσβυτέρας 'Ρώμης, τῶν δὲ ἄλλων πάντων προτιμᾶσθαι'. CJ, 654.

[51] Canon 28 of Chalcedon, omitted by Dionysius, though included in the *Collectio Prisca*, runs as follows: 'Following in every way the decrees of the holy fathers and recognising the canon which has recently been read out – the canons of the 150 most devout bishops who assembled in the time of the great Theodosius of pious memory, then emperor, in imperial Constantinople, new Rome – we issue the same decree and resolution concerning the prerogatives of the most holy church of the same Constantinople, new Rome. The fathers rightly accorded prerogatives to the see of older Rome, since that is an imperial city; and moved by the same purpose the 150 most devout bishops apportioned equal prerogatives to the most holy see of new Rome, reasonably judging that the city which is honoured by the imperial power and senate and enjoying privileges equalling older imperial Rome, should also be elevated to her level in ecclesiastical affairs and take second place after her. The metropolitans of the dioceses of Pontus, Asia and Thrace, but only these, as well as the bishops from these dioceses who work among the non-Greeks, are to be ordained by the aforesaid most holy see of the most holy church in Constantinople. That is, each metropolitan of the aforesaid dioceses along with the bishops of the province ordain the bishops of the province, as has been declared in the divine canons; but the metropolitans of the aforesaid diocese, as has been said, are to be ordained by the archbishop of Constantinople, once agreement has been reached by

the antiquity of the Roman See very strongly by including decretals of Pope Innocent I and Anastasius II which stress this point. We have already mentioned the interest that Dionysius had in the Eastern Churches as shown by his translations of Greek writings into Latin and his work on the dating of Easter. J. Rambaut thinks that all of the work of Dionysius, both as a translator of Greek books and as the compiler of the *Dionysiana,* is best seen in the context of the dialogue that was going on in the early part of the sixth century between Rome and Constantinople. She therefore proposes that a very satisfactory explanation of Dionysius's work is to be found in this hypothesis:

> We would like to avoid throwing ourselves in our turn into hypotheses which nothing can support, but we are not far from thinking that Dionysius, translator and compiler, petitioned perhaps at the same time by the Byzantine ambassadors and by Pope Hormisdas, desired to offer both sides texts which could serve as the basis for their discussions.[52]

This would certainly be a fitting context for his translation of the Greek canons, his selection of papal letters, as well as his other work in translating Greek authors for his Roman readers. It provides a persuasive raison-d'être for his whole enterprise.

Dionysius's collection of canons and papal decretals was never officially promulgated by church authorities. The Church in Rome did not at that time think of doing for canon law what Justinian was about to accomplish at Constantinople with regard to Roman law with his new *Corpus Iuris Civilis.* However, the collection of Dionysius became the generally accepted Code of Canon Law for the Western Church and as such had a decisive influence on later developments. As Stickler noted, it would be difficult to exaggerate the importance of Dionysius for the later development of canon law in the Latin Church.[53]

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vote in the usual way and has been reported to him'. DEC, vol. I, 99–100. This canon was not accepted by the Roman legates and Pope Leo the Great rejected it. Although centuries later it was accepted by the Latin Church. It will be discussed in detail in Chapter Five, when T. Balsamon's approach to the Roman primacy is being considered.

[52] 'Nous voudrions éviter de nous lancer à notre tour dans des hypothèses que rien ne peut étayer, mais nous ne sommes pas éloignés de penser que Denys, traducteur et compilateur, sollicité peut-être à la fois par les ambassadeurs byzantins et par le pape Hormisdas, a voulu fournir aux deux parties des textes qui pourraient servir de base à leur discussion'. DDC, vol. 4, 1151.

[53] See A. Stickler, *Historia Iuris Canonici,* 49: 'Momentum operis Dionysii non facile potest nimis extolli: in ordine *versionis* textuum graecorum translationes antiquiores et peiores corriguntur, eliduntur magis in dies. In ordine *collectionis* ratione systematis ante omnia distinguuntur canones conciliares a statutis RR. Pontificum; utraque chronologice sat perfecte ordinata sunt; ita tamen, ut inter canones conciliares praecedentia hierarchica servata sit. Ad usum practicum utrisque Index anteponitur. Quibus omnibus *Dionysiana* perfectior omnium aliarum compilationum, etiam sub aspectu formali-systematico evasit'. ('It would be difficult to exaggerate the importance of the work of Dionysius: as far as the translation of the Greek texts are concerned, the older and poorer translations were corrected and increasingly dropped. Concerning the systematic approach

He had produced a carefully prepared canonical collection in which he provided a faithful translation of the Greek conciliar canons. To this he had added a selection of papal decretals which had a more general interest. The result was a substantial *Corpus Iuris Canonici* for the Latin Church and one that was easy to use. Probably by the year 530 all would have been in place. The influence exerted by Dionysius was due to the merits of the work: he provided for the Church in Rome a Latin translation of the Greek conciliar canons and added the canons from Sardica and Africa. Secondly, he provided a well-ordered collection which was superior to all that had preceded it in the West. He succeeded in providing, in one volume, the universal law of the Latin Church of that time. In other words, he provided the first universal collection which gave expression to and confirmed what was at that time the *ius commune* – the common law – of the Church in the Western Roman Empire, the Latin Church, and he made this available to posterity. In doing so he opened up a new era in the history of canon law in the West. Lastly, it was Dionysius who laid the firm foundations for what was to develop rapidly as the papal law of the Latin Church – *ius pontificium Ecclesiae Latinae.* In his collection of papal decretals he had provided an example which would be followed and developed by all subsequent canonists in the Latin Church. From this time onwards the basis for all law in the Western Church would be considered to be twofold: a) conciliar canons; and b) papal legislation: *ius pontificium/ius decretalium.*

For all these reasons the canonical collection produced by Dionysius Exiguus in the first half of the sixth century is universally held to be among the most important canonical collections of the early part of the Middle Ages. It is not surprising to find him called by historians of canon law in the West the 'Father of Canon Law'. After a series of earlier regional collections he had provided a collection that could be described as universal, at least for the Latin Church.[54] It is from around the beginning of the sixth century that one can speak

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in making a collection, first of all, conciliar canons were distinguished from decrees of the Roman pontiffs and both collections are quite well organized chronologically, so that amomg the canons the hierarchical precedence is maintained. A table of contents is placed before each collection to make it more practical. In all these aspects the *Dionysiana* turned out to be better than all other collections, even from the point of view of systematic arrangement').

[54] See A. Stickler, *Historia Iuris Canonici,* 59: 'Meritum Dionysii ad hoc restringi debere nobis videtur, quod collectionem primam universalem adornavit et ita unitatem, de facto latentem, patentem reddit, expressit, firmavit; quod collectionibus particularibus regionalibus fundamentum commune novae evolutionis suppeditavit, depellendo, et oblivioni tradendo veteres collectiones particulares et revera novam epocham in historia collectionum in toto orbe Christiano inchoavit: meritum sane haud parvum.' ('We think that the achievement of Dionysius should be restricted to this: that he made the first universal collection and in doing so made visible the unity that was in fact latent; he gave expression to this unity and strengthened it. He provided a common foundation for a new development and, by replacing the old particular collections and causing them to be forgotten, he in fact opened up a new epoch in the history of collections in the whole Christian world: clearly no mean achievement'). The phrase 'in toto orbe Christiano' is perhaps not quite accurate.

of a kind of common and universal law for the Latin Church. Thanks to the work of Dionysius Exiguus, the Western Church was also provided with a systematic and reliable compendium of this law.[55]

The canonical collection of Dionysius exerted a strong influence on all subsequent canonical collections in the West. It soon became known simply as the *Corpus Canonum* and was in fact for many the common source for church law. It was well known in Africa, in Gaul and in Spain. The *Collectio Hispana* of the seventh century included all the decretal letters from the *Dionysiana* in exactly the same order in which Dionysius had arranged them. Also the *Collectio Hibernensis* of the beginning of the eighth century has the canons in the Latin version of the *Dionysiana.*

In the course of time the original work of Dionysius was enlarged by various additions and transformed. It even altered its name and became known, after 774, as the *Collectio Dionysiana – Hadriana.* In that year Pope Hadrian I (772–795) gave to the Emperor Charlemagne a revised and enlarged version of Dionysius' collection. This revised version differed from the original *Dionysiana* in the following way. It contained a dedication to the Emperor Charlemagne. A list of title headings was added for the whole collection The names of the bishops who signed them were added to most of the council decrees. The canons of the Council of Carthage were divided into two sections (33 cc and 105 canons). And finally, to the decretals of the popes were added fifteen new documents, taken partly from Roman synods and partly from papal decretals from Pope Hilarus (461–468) to Pope Gregory II (669–731).

This *Dionysiana-Hadriana*[56] was sent by Pope Hadrian to be of assistance to the king and to the bishops. In the year 802 this collection was presented by Charlemagne to the bishops of the Carolingian Empire as the authentic collection of church law. It was called the *Codex seu Liber canonum,* the quasi-official canonical collection for the Empire. Short compendia were produced to facilitate its use. As Van Hove puts it: 'The *Liber canonum* of Dionysius and his *Liber decretorum* must be numbered among the principal sources of canon law in the first part of the Middle Ages'.[57]

Before discussing the nature and content of the canonical legislation collected by Dionysius, I want to turn from Rome to the situation in Constantinople in the middle of the sixth century and examine the work of another canonist

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Stickler seems to have forgotten that the Latin West in the mid-sixth century was not in fact the 'whole Christian world'. There were other flourishing Christian communities in the East.

[55] See Luciano Musselli, *Storia del Diritto Canonico* (Turin 1994), 24–25.

[56] The edition by Justell is reproduced in PL, vol. 67; see cols 315–342, for the decretals that were added to the *Dionysiana.*

[57] A.Van Hove, *Prolegomena,* 161. J. Gaudemet: 'C'est incontestablement la plus importante collection de cette époque'. *Les sources du droit de l'Église en occident,* 134.

who also compiled a collection of canons about twenty-five or thirty years after Dionysius had completed the *Dionysiana.*

John Scholastikos and sixth-century Constantinople

After the fall of the Western Empire to the Ostrogoths in 476, the Greek part of the Empire gradually became the effective centre of imperial power. The citizens of Constantinople, the 'New Rome', considered themselves the true heirs of the Roman Empire, the genuine *Rhomaioi.* The Acacian Schism was eventually resolved in 519. However, during the thirty-five years that it lasted, the Church in Constantinople grew more and more independent of Rome. Justinian became sole Emperor in 527 and for the next thirty-eight years provided strong and imaginative leadership. He inaugurated a new era. He was determined to reconstitute the Roman Empire and recover the provinces that had been overrun by the 'barbarians'. Within a few years he had retaken Africa from the Vandals and begun a successful campaign to regain Italy and Spain.

Constantinople in the middle of the sixth century was a magnificent city. It was wealthy and full of splendid architectural monuments and palaces.[58] It had been the capital of the Eastern Empire for more than 200 years. It was the Constantinople of that splendid new wonder of the world, the Great Church of the Holy Wisdom, Hagia Sophia, begun by Justinian in 532 and dedicated in 537, as well as numerous other churches and palaces constructed during his reign. The population of the city had gone beyond 500,000. The language used by all was Greek. There was the presence of the imperial court and the throne of the patriarch, who was said to control enormous wealth. It was also a cultural and business centre of paramount importance.

From the very first years of his reign, Justinian promoted a wide-ranging legislative reform that was to have far-reaching effects on the development of both civil law and canon law. In 529 he promulgated a *Codex* of imperial constitutions.[59] Then he commissioned an official collection of thousands of ex-

[58] For a description of Constantinople in the time of Justinian, see Robert Browning, *Justinian and Theodora,* revised edition (London 1987), 31–41. Browning gives a clear account of the building of the church of Hagia Sophia (73–77). For the age of Justinian in general, see Averil Cameron, *Procopius and the Sixth century* (London 1985). This is primarily a study of the writings of Procopius, the most important sixth-century historian of Constantinople, but Cameron sets Procopius securely into his historical context.

[59] A century earlier, in 429, Emperor Theodosius II had ordered an official collection of imperial constitutions to be made: the *Codex Theodosianus,* promulgated in 438. Justinian's new *Codex* made a collection of the constitutions to be found in the three previous collections: *Codex Gregorianus* (219 AD), *Codex Hermogenianus* (295 AD) and the *Theodosianus,* as well as the new constitutions that had been promulgated up to and including those of Justinian. The emperor decreed that only the constitutions included in the new revised *Codex* would have the force of law. 'Repetita itaque iussione nemini in posterum concedimus vel ex decisionibus nostris vel ex aliis

cerpts from the writings of the famous classical Roman jurists – Papinian (150–212 AD), Ulpian (160–228 AD), Paulus (fl. c. 200 AD), Modestinus (d.244 AD), a pupil of Ulpian and the last distinguished jurist of the classical period, and many others. Tribonian and his collaborators produced a collection consisting of fifty books, each book divided into titles, and each title subdivided into chapters. It was completed in 533 and became known as the Digest or Pandects. It was in Latin, of course, because Latin was still the official language of the law.[60] The emperor himself came from a Latin-speaking periphery of the empire, near Skopje, half way as the crow flies between Rome and Constantinople. To ensure that lawyers were trained to use the new collections, Justinian also ordered the publication of the *Institutiones*, a manual for students of law. Then he commissioned a second edition of the *Codex*, now known as the *Codex Repetitae Lectionis*. So, by the year 534, Justinian, in these three law-books, had promulgated what became known as the *Corpus Iuris Civilis* which was to have a lasting influence on the development of law. It was a remarkable achievement.[61]

The whole enterprise was made possible by the genius of an outstanding jurist in the imperial court at that time, Tribonian, a Pamphylian by origin, whose mother tongue was probably Greek. Before he came to direct the creation of the *Corpus Iuris Civilis*, we know very little about his life. It is likely that he was trained in the law school of Beirut. In 528 he was *Magister Officiorum* in the court of the new Emperor Justinian. He formed part of the commission, directed by John of Cappadocia, that produced the first *Codex* in 529. In 529 he was quaestor of the Sacred Palace, the highest judicial officer of the empire. From the posts he held in the court it is clear that he was a person of remarkable ability and one who enjoyed the esteem of the emperor. In fact, when Justinian decided to order the compilation of the Digest, it was to Tribonian that he entrusted not only the task of directing the enterprise but also the freedom to

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constitutionibus, quas antea fecimus, vel ex prima Iustiniani codicis editione aliquid recitare: sed quod in praesenti purgato et renovato codice nostro scriptum inveniatur, hoc tantummodo in omnibus rebus et iudiciis et obtineat et recitetur'. ('And so we repeat the command that we permit no one from now on to cite in court anything either from our own constitutions or from other constitutions we issued previously or from the first edition of our code; but what is contained in this present revised and clarified code of ours, and only this, is to stand and be cited in all matters and judgments'). From Justinian's decree to the senate promulgating the revised code in 534. CJ, 4.

[60] 'Though mediated by serviceable Greek and Syriac translations, Latin, "the Roman tongue", continued to be used as the sacred language of the "Roman" state – as opaque but as redolent of uncanny continuity with the distant past as was the Latin of the former Catholic Mass'. Peter Brown, *The Rise of Western Christendom* (Oxford 1996), 121.

[61] For a brief account of Justinian's legislation, see W. Kunkel, *An Introduction to Roman Legal and Constitutional History* (Oxford 1966), 152–164; also H. Jolowicz, *Historical Introduction to the Study of Roman Law* (London 1952), 488–516.

choose his collaborators. It is thought, with high probability, that the very idea of making such a compilation in the first place came from Tribonian.[62]

This was the city to which the advocate, John, known as Scholastikos came in 550, when the promulgation of the *Corpus Iuris Civilis* was still a recent event. Tribonian had been active as quaestor until his death in or around 543.[63] John came from Antioch, which was also a cultural centre of importance in the sixth century. The patriarch of Antioch enjoyed a position of preeminence over the other bishops of the East, since Antioch had been acknowledged as early as the First Council of Nicaea, together with Rome and Alexandria, as a major see of Christendom.[64] His title was 'Patriarch of Antioch and of all the East' (i.e. today, Syria and Palestine). There was also a celebrated theological school of Antioch and the liturgy of Antioch gave rise to one of the five Eastern rites that we know today. John Scholastikos had worked as an advocate in Antioch. He was obviously a person of some standing in the church there because he was sent by the patriarch to Constantinople as his *apocrisarius*, or permanent legate at the imperial court. He became *persona grata* with Justinian and it was Justinian who later (at the beginning of 565) named him patriarch of Constantinople.[65] The Emperor died in November of that year.

John was born at Seremios, near Antioch, probably around 503. The son of a cleric, he himself joined the ranks of the clergy only in later life, when, in 550, the patriarch of Antioch wanted to send him to Constantinople. Until then he must have worked as an advocate in Antioch, to have received the title 'Scholastikos'. It was as such in Antioch that he put together his famous collection of canon law. All the extant manuscripts of the *Synagoge* call the compiler of this collection John the 'Scholastic' and say that he was a priest of Antioch. So the collection was most probably made at Antioch and after the year 548, when he was ordained a priest, and before he went to Constantinople.

It is known that the Council of Chalcedon (451) had at its disposal a collection of laws, because this is mentioned in the very first canon of that Council,

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[62] For a detailed account of the methods by which Justinian's *Corpus* was produced, see Tony Honoré, *Tribonian* (London 1978).

[63] 'That he [Tribonian] was also the architect and probably the draughtsman of other sweeping innovations of Justinian's becomes clear when we observe that, after his death in 543, the stream of imperial legislation suddenly runs dry. These enactments, the *Novellae*, are the work of a powerful legal mind, with a distinctive and personal manner of expression'. R. Browning, *Justinian and Theodora*, 52.

[64] Council of Nicaea (325), canon 6: 'The ancient customs of Egypt, Libya and Pentapolis shall be maintained, according to which the bishop of Alexandria has authority over all those places, since a similar custom exists with reference to the bishop of Rome. Similarly in Antioch and the other provinces the prerogatives of the churches are to be preserved'. Canon 7 gave particular prestige to Aelia (Jerusalem). These canons are of first importance because they stand at the origin of the patriarchates in the Eastern part of the Empire. DEC, vol. I, 8–9.

[65] Another famous preacher from Antioch who had become patriarch of Constantinople in 398 was St John Chrysostom.

which decreed that: 'the canons issued by the holy fathers at each and every council up till now retain their force'.[66] However, it is not known which canons this collection contained. So there were canonical collections but there is no information about them. Before John Scholastikos began his work, around the year 535, an author, unknown to us now, had collected the canons of a number of Eastern councils and arranged them under sixty titles, with an appendix containing twenty-one imperial constitutions dealing with ecclesiastical matters, in accordance with the *Codex Repetitae Lectionis*. It seems to have been known as the *Synagoge canonum* or *Corpus canonum Orientale*. This collection has been lost but we know about it from John Scholastikos himself who tells us that it was this earlier collection that he had taken as the foundation for his own.

In his collection he regrouped the conciliar canons systematically under fifty titles following a certain logical sequence and added extracts from the letters of St Basil the Great. He called his collection:

> Συναγωγὴ κανόνων ἐκκλησιαστικῶν εἰς ν΄ τίτλους διῃρημένη
> A Compilation of ecclesiastical canons divided into 50 Titles

It is not unlikely that it was Justinian's collections of Roman Law that gave John Scholastikos the idea of doing something similar for canon law. Later, when he was patriarch of Constantinople (565–577), he produced a revised edition of his *Synagoge in Fifty Titles*, and he added an important supplement to his collection: eighty-seven imperial constitutions, taken from the constitutions of Justinian. This is the oldest Greek canonical collection that we possess and it became the basis for all later collections in Constantinople. It is for this reason that historians refer to John the Scholastic as *primum iuris canonici Graecorum parentem*,[67] the founding father of the canon law of the Greeks.[68]

The sources for his collection of canons are substantially the same as those used by Dionysius for his translation of the canons:

1) 85 *Apostolic Canons* (Dionysius had included only the first 50 of these)

2) Canons from the following councils: Nicaea I, Ancyra, Neocaesarea, Sardica, Gangra, Antioch, Laodicea, Constantinople I and Chalcedon. These are the very same canons as those translated by Dionysius. John's *Synagoge*, however, includes 'canons' from the Council of Ephesus of 431. In fact, the Council of Ephesus did not promulgate any disciplinary canons in the strict sense of the term and that is why we do not find conciliar canons from Ephesus in the *Dionysiana*. What the Council of Ephesus did was to give some instructions that were called for by local circumstances at that time and dealing mainly with

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[66] Council of Chalcedon, canon 1: 'Regulas sanctorum patrum per singula nunc usque concilia constitutas proprium robur obtinere decrevimus'. DEC, vol. I, 87.

[67] J. B. Pitra, *Juris ecclesiastici Graecorum historia et monumenta*, II (Rome 1868), 385.

[68] For a critical edition, see Vladimirus Beneševič, *Ioannis Scholastici Synagoga L Titulorum* (Munich 1937).

Nestorianism, and it provided some answers to concrete cases that had been put to it. From all this, some texts were taken over by the canonists in the East and inserted into the canonical collections. This is the origin of the eight 'canons' that are attributed to the Council of Ephesus in the Greek collections.[69]

3) 'Canons' from the writings of St Basil the Great. These sixty-eight texts are taken from the second and third letters of St Basil written in 374–375 to Amphilochius, bishop of Iconium. They deal mainly with moral problems and public penances. By including these 'canons' in his Synagoge, John Scholastikos was in fact proposing as general church law the advice that St Basil had given to a young bishop who had consulted him. The practice would develop in the East, as did a similar approach to papal decretals in the Western Church.

4) Eighty-seven excerpts from the *Novellae* of Justinian. These were taken from imperial constitutions issued by Justinian, after the promulgation of the *Codex* in 534. (They are referred to as *leges novellae*, or supplementary legislation). The excerpts selected by John Scholastikos for his *Synagoge* show clearly how wide-ranging the imperial legislation was in church matters. The excerpts were taken from the following *Novellae*: n. 3 (535 AD), concerning the clergy of Constantinople; n. 5 (535 AD), on monks; n. 6 (535 AD), on the ordination of bishops and other clerics, and on church expenses; n. 32 (535 AD), on the interest that can be charged on loans to farmers; n. 46 (536 AD), on the alienation of church property; n. 56 (537 AD), on simony; n. 57 (537 AD), concerning the clergy; n. 67 (538 AD), on oratories; n. 83 (AD 539), that the clergy must go before their own bishop and after that to the civil judges; n. 84 (AD 539), on consanguinity; n. 123 (546 AD), a very long *Novella* dealing with bishops, priests and monks. *Novella* 131 (545 AD) is an important constitution concerning the clergy. Its first two laws are particularly interesting and important. The first confirms the canons of the ecumenical councils and puts them on a par with imperial constitutions; while the second assents to the primacy of the Roman See and places Constantinople second after Rome.[70]

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[69] See Peter L'Huillier, *The Church of the Ancient Councils* (New York 1996), 53.

[70] *Novella* 131 (545 AD): on ecclesiastical canons and privileges. Chapter I: 'Θεσπίζομεν τοίνυν, τάξιν νόμων ἐπέχειν τοὺς ἁγίους ἐκκλησιαστικοὺς κανόνας τοὺς ὑπὸ τῶν ἁγίων τεσσάρων συνόδων ἐκτεθέντας ἢ βεβαιωθέντας, τουτέστι τῆς ἐν Νικαίᾳ τῶν τιή καὶ τῆς ἐν Κωνσταντινουπόλει τῶν ἁγίων ρν΄ πατέρων καὶ τῆς ἐν Ἐφέσῳ πρώτης, ἐν ᾗ Νεστορίος κατεκρίθη, καὶ τῆς ἐν Καλχηδόνι, καθ' ἣν Εὐτυχὴς μετὰ Νεστορίου ἀνεθεματίσθη. τῶν γὰρ προειρημένων ἁγίων δ΄ συνόδων καὶ τὰ δόγματα καθάπερ τὰς θείας γραφὰς δεχόμεθα καὶ τοὺς κανόνας ὡς νόμους φυλάττομεν'. ('Therefore we confirm that those holy ecclesiastical rules have the force of law, which were issued or confirmed by the four holy councils; that is, by the 318 fathers at Nicaea, and the 150 holy fathers at Constantinople, and in the first [synod] at Ephesus in which Nestorius was condemned, and at Chalcedon, in which Eutyches was excommunicated along with Nestorius. For we accept the dogmas of the above-mentioned four councils just like Holy Scripture and we keep their rules just like laws'). *Novellae*, 655.

The content of this legislation will be discussed shortly, but what this early canonical legislation was dealing with can be seen in the following abridged list of the fifty titles:[71]

Title I	The honour due to the patriarch.
Title II	The honour due to the metropolitan.
Title III	A bishop may not ordain outside his own territory.
Title IV	A bishop's private property to be kept distinct from church property.
Title V	A bishop must administer along with his priests and deacons.
Title VI	A bishop may not appoint his own successor.
Title VII	On the election and ordination of bishops.
Title VIII	On the election of a new bishop within three months of the vacancy.
Title IX	On the question of whether eunuchs can be ordained bishops.
Title X	On bishops not being accepted by the city to which they are sent.
Title XI	Concerning those ordained through political pressure or for money.
Title XII	Bishops and clergy should remain in the city for which they were ordained.
Title XIII	Bishops should not visit the emperor without letting the metropolitan and the whole synod know.
Title XIV	Neither bishops nor clergy should accept public power.
Title XV	A bishop should not, while under the influence of anger, banish those who have angered him, or strike any of the faithful who make mistakes.
Title XVI	Concerning bishops who are under accusation or who are bringing accusations against anyone.
Title XVII	Those removed from their post should not take part in the liturgy.
Title XVIII	It is not permitted to share with those who have been excommunicated.
Title XIX	A bishop may not receive into his clergy clerics from another eparchy.
Title XX	Clerics may not be absent without the knowledge of their own bishop.
Title XXI	Concerning chor-bishops and clergy in the countryside.

[71] The fifty titles, along with a list of the canons that are listed under each, will be given in full in *Appendix One*, taken from the above-mentioned edition by V. Beneševič.

Title XXII	Presbyters and all the clergy should be under the direction of their bishop.
Title XXIII	Concerning the role of deacons at the Eucharist.
Title XXIV	On the ordination of women and their relations with men after ordination. Old men should not be ordained and women may not enter the sanctuary.
Title XXV	On ordination and the qualities required.
Title XXVI	Cantors, lectors, subdeacons and exorcists.
Title XXVII	A priest may not send away his wife on the pretext of piety, nor may an unmarried priest marry after ordination.
Title XXVIII	A priest should not have women in his house except those who are above suspicion, nor should he attend the weddings of those who marry for a second time nor should he watch spectacles at weddings, nor dance.
Title XXIX	It is not permissible for bishop, cleric or layman to condemn marriage or the eating of meat.
Title XXX	No bishop or cleric or even layman should be found dicing in taverns.
Title XXXI	On keeping the fasts laid down by the church.
Title XXXII	On those who adorn themselves without discretion.
Title XXXIII	Hermits must be subject to their bishop.
Title XXXIV	On monks and monasteries.
Title XXXV	On the catechumenate.
Title XXXVI	Those recently baptised should not be ordained at once. Concerning the orthodox faith necessary for the baptized.
Title XXXVII	Concerning bishops who have been ordained irregularly; on heretics and those married to heretics; on avoiding dealings with heretics and Jews.
Title XXXVIII	On those who turn from heresy and come to the Catholic Church.
Title XXXIX	On how to deal with those who lapsed under pressure.
Title XL	On the crimes of murder, mutilation, abortion and child murder.
Title XLI	On married people who separate without reason.
Title XLII	Concerning prostitution and adultery.
Title XLIII	On those who marry for a second time or who enter on numerous marriages.
Title XLIV	On those who marry two brothers or two sisters.
Title XLV	On perjury and other crimes.
Title XLVI	On removing sacred things or offerings from the church.

Title XLVII	On those who do not come to church for three consecutive Sundays.
Title XLVIII	On those who disobey the laws of the church.
Title XLIX	On how often in each eparchy there should be a synod and when it should be. All bishops must attend the synod unless prevented by necessity.
Title L	On the canon of prayers and readings.On the time of Easter.

This *Synagoge* of John Scholastikos has an important place in the history of canon law in the Eastern Churches. Firstly, it is the oldest systematic collection in the Greek Church and became the basis for all other canonical collections of the Church in Constantinople. Secondly, John Scholastikos included in his canonical collection sixty-eight 'canons' from the letters of St Basil. This was an innovation of great importance because John was the first to introduce the writings of the Fathers of the Church into a strictly canonical collection. There did exist collections of the 'canons' and *florilegia* of sayings of the Fathers, but John Scholastikos was the first to make the writings of the Fathers an integral part of a canonical collection. In this way he started the practice of attributing to the Fathers a juridical authority in the Church which, as private individuals, they did not possess. This would be greatly developed in Constantinople in the century following the death of John and it would be formally accepted by the Council *in Trullo* in 691. This example was followed by all the later canonical collections. Where did he get this idea of giving juridical force to the teaching of men who had no legislative authority in the Church? Perhaps patriarch John knew of the collection that Dionysius had produced at Rome, and deliberately put his 'canons' of St Basil where Dionysius had placed the decretal letters of the bishop of Rome? As we shall see, the idea was taken up and greatly developed in the following centuries in Constantinople.

Thirdly, since John Scholastikos was patriarch of Constantinople, the revised version of his *Synagoge* soon became the accepted canonical collection for the first patriarchal see of the East. It was highly esteemed and frequently copied for centuries. In fact,in the twelfth century, Theodore Balsamon complained that many were still using the *Synagoge* of John Scholastikos instead of the *Nomokanon in XIV Titles*, which he held was the only official canonical collection.[72] Lastly, it was John's *Synagoge* that St Methodios, 300 years or so later, took for his canonical collection. He edited it and translated his version into Slavonic in the late ninth century. In this way John Scholastikos had a decisive

[72] 'La collection en 50 titres et le *Nomokanon* en XIV titres eurent dans l'Église byzantine beaucoup de succès et jouissaient d'une grande autorité. Á la fin du XIIe s. Balsamon se plaint que la collection en 50 titres soit encore en les mains de beaucoup de gens'. E. Herman, DDC, vol. 6, 119.

effect on the development of canon law in the Slavonic and Russian Churches, as we shall see.

The content of this canonical legislation

The *Dionysiana* and the *Synagoge in 50 Titles* formed the foundation for the later development of canon law in Rome and in Constantinople respectively. Each collection is a compendium of the basic principles of church order and shows what the preoccupations of the Church were in these early centuries. The division of the Church into dioceses, metropolitan provinces and major sees, which would later be called patriarchates, is evident from very early on. The Great Churches – Rome, Alexandria, Antioch, Jerusalem and Constantinople – occupy positions of special prestige. The primacy (or *a* primacy) of the bishop of Rome is acknowledged by all.[73] Regular episcopal synods are prescribed for every region. These are to be convoked by the metropolitan and are considered the ordinary means for the dioceses to live and act in harmony with each other. It is interesting to see how joint conciliar action by the bishops is stressed right from the Apostolic Canons onwards: 'Let there be a meeting of the bishops twice a year, and let them examine amongs themselves the decrees concerning religion and settle the ecclesiastical controversies which may have occurred.'[74] The duty to hold synods twice a year is also laid down by the First Council of Nicaea:

> Accordingly, in order that there may be proper opportunity for inquiry into the matter, it is agreed that it would be well for synods to be held each year in each province twice each year, so that these inquiries may be conducted by all the bishops of the province assembled together.[75]

One hundred and twenty-five years later this law was evidently not being observed everywhere, as is clear from canon 19 of the Council of Chalcedon:

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[73] See Nicaea I, canon 6, and Constantinople I, canon 2, where the privileges of Alexandria and Rome are stated. Canon 3 of the First Council of Constantinople (381) brings Constantinople into the picture: 'Because it is new Rome, the bishop of Constantinople is to enjoy the privileges of honour after the bishop of Rome'. This would be taken up again in canon 28 of Chalcedon, which will be discussed later. The basis for this is explicitly stated to be the *custom that had grown up:* 'antiqua consuetudo servetur...'; 'The ancient customs of Egypt, Libya and Pentapolis shall be maintained, according to which the bishop of Alexandria has authority (τὴν ἐξουσίαν – *potestatem)* over all these places, since a similar custom exists with reference to the bishop of Rome'. DEC, vol. I, 8–9.

[74] *Apostolic Canons,* canon 37. Percival, 596.

[75] Nicaea I (325), canon 5, DEC, vol. I, 8. This canon is also referred to in canon 2 of the First Council of Constantinople (381).

> We have heard that in the provinces the synods of bishops prescribed by canon law are not taking place, and that as a result many ecclesiastical matters that need putting right are being neglected. So the sacred synod decrees that in accordance with the canons of the fathers, the bishops in each province are to foregather twice a year at a place approved by the bishop of the metropolis and put any matter arising to rights.[76]

At the end of the fourth century, when there was great need of church reform in Africa, it was St Augustine who insisted to the recently-appointed bishop of Carthage, Aurelius, that the only way effective reform could be carried out would be by regular synodical action by the bishops, led by Aurelius. As a result, there were regular synods in Africa between 393 and 419 and, as we have seen, Dionysius included these African canons in his collection.[77] These canons recognize a hierarchy among the episcopal sees and acknowledge that this is based on an ancient custom. They also recognize an authority possessed collectively or collegially by the bishops. By mid-fifth century, synodical government was regarded as the norm. The canons promulgated by the synods were collected together and respected, as is plain from the first canon of the Council of Chalcedon: 'We have deemed it right that the canons hitherto issued by the saintly fathers at each and every synod should remain in force.'[78] All this seems to have been a spontaneous evolution in the Church which was not the result of clear juridical acts by authority. It developed under the guidance of the Spirit.[79]

Also, the rights and duties of the bishop within his diocese are delineated in these canons in some detail, as are those of the metropolitans. The way in which bishops are elected is prescribed:

> It is by all means desirable that a bishop be appointed by all the bishops of the province. If, however, this is difficult because of some pressing necessity or the length of the journey involved, let at least three come together and perform the ordination, but only after the absent bishops have taken part in the vote and given their written consent. In each province the right of confirming the proceedings belongs to the metropolitan bishop.[80]

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[76] Chalcedon, can. 19, DEC, vol. I, 96.

[77] For a discussion of these canons, see F. L. Cross, 'History and Fiction in the African Canons', JTS, vol. 12 (1961), 227–247.

[78] DEC, vol. I, 87.

[79] That customs can and do arise from the inspiration of the Holy Spirit is acknowledged in the recently promulgated *Code of Canons for the Eastern Churches,* in which canon 1506 runs as follows: 'The custom of the Christian community, in as much as it responds to the activity of the Spirit within the ecclesial body, can have the force of law'. On this topic, see Ladislas Örsy, 'The Development of the Concept of Protos in the Ancient Church', in *Kanon* 9 (Vienna 1989), 83–97.

[80] Nicaea I, canon 4, DEC, vol. I, 7. The same regulation is repeated by the Councils of Antioch (canon 19), Sardica (canon 6) and Laodicea (canon 12).

Church disputes are to be settled in church courts. Many canons deal with clerical discipline and with the qualities required in candidates for priestly ordination; a high moral standard is prescribed. The canons in both collections presuppose that there would be a married clergy. Many canons deal with engagement and marriage. Regulations for the administration of baptism, confirmation, penance and the celebration of the Holy Eucharist are frequently stated, and there is much legislation concerning the liturgical feasts. There are also canons dealing with monks and deacons. There are numerous canons that prohibit certain crimes and lay down the penalty incurred for disobedience, which is very often either deposition from office or excommunication.

A general picture of the major preoccupations of the bishops who promulgated these canons can be gained from the number of canons dealing with different subjects. There are a little more than three hundred canons in the fifty titles of the *Synagoge* of John Scholastikos (excluding the canons of St Basil the Great). There are thirteen titles that are concerned with prohibitions, crimes and penalties, with 104 canons.[81] Concerning the rights and duties of bishops there are eighteen titles, with 92 canons. On the formation, rights and duties of the lower clergy, there are ten titles, with 68 canons. On the duties of a Christian, on prayer and the sacraments, five titles, with 45 canons. On marriage, three titles, with nine canons, and on hermits and monks, two titles with seven canons. These statistics do not include the canons of the African synods, because these were not contained in the first edition of the *Synagoge*. The councils were, of course, often concerned primarily with more important matters, concerning the faith, than with the issuing of the canons we are discussing here. But the statistics provide an idea of what the disciplinary preoccupations of the bishops were in both East and West at that time. Many of the canons in these two collections are obsolete today,[82] but this early canon law provided the foun-

[81] These figures are not meant to be taken as mathematically exact. Quite a number of canons are repeated in different councils and others are overlapping, but the numbers do give a fair idea of what topics the canons were dealing with.

[82] The following may be seen as examples of canons that are now obsolete: 'A presbyter is not to be ordained before the age of thirty years, even if he be most worthy' (canon 14 of the Council *in Trullo*); bishops and priests may not be transferred from the parish for which they were ordained to another (canon 15 of the First Council of Nicaea); 'If any of the clergy be found eating in a tavern, let him be excommunicated, unless he has been constrained by necessity, on a journey, to lodge in an inn', (canon 54 of the *Apostolic Canons)*; 'Let no one in the priestly order nor any layman eat the unleavened bread of the Jews, nor have any familiar intercourse with them, nor summon them in illness, nor receive medicines from them, nor bathe with them; but if anyone shall do so, if he is a cleric, let him be deposed, but if a layman let him be excommunicated'. (Canon 11 of the Council *in Trullo*. This is but one example of the anti-Jewish legislation that is to be found in these early centuries).

dations for church order in the early centuries, and for this reason merits our attention today.[83]

A comparison of the *Dionysiana* with the *Synagoge in Fifty Titles*

Church government

The *Synagoge* was compiled in Antioch only twenty-five or thirty years after the *Dionysiana* had appeared in Rome, and it is instructive to see how these canonical collections compare with each other. Exactly the same canons from the early councils held in the East form the main part of both collections. So the basis for the canon law both of the Latin Church in the West and the Greek Church in Constantinople is constituted by the same canons of the ecumenical and of the regional councils of the fourth century and the fifth, all held in the Eastern part of the Empire. The *Dionysiana* gives these canons in the chronological order of the councils, whereas the *Synagoge* arranges them systematically under fifty headings, but they are the same conciliar canons. To these canons the *Dionysiana* adds the canons promulgated by the Council of Carthage in 419, the *Codex Ecclesiae Africae*. John Scholastikos did not include these canons but as a matter of fact these African canons were added to the Greek collection in Constantinople later in the sixth century.[84] So the main difference between the two collections lies in what each added to the conciliar canons. The *Dionysiana* contains a whole series of 'canons' from thirty-eight decretal letters of eight popes. The *Synagoge* does not contain a single Roman decretal. Instead, John Scholastikos has added sixty-eight 'canons' from two letters of St Basil the Great and, more significantly still, eighty-seven excerpts from the imperial constitutions of Justinian. This difference between the two canonical collections – which can be taken as virtually containing the official legislation of each Church – reveals the beginnings of two different outlooks, two different approaches concerning church government and administration. From the point

[83] R. C. Mortimer maintained that the study of the nature and content of the ancient law is '... a matter of extreme importance. For this ancient law contains the fundamental principles of Church Order. I believe that a close study of this law will greatly help us all to a better understanding of the nature of the Church, and even that the way to Reunion, ultimately, lies in a return to these principles where they have been abandoned, denied or forgotten. Certainly, I think that any scholar who would present to the modern world a carefully analysed and annotated account of the content of this law would render a service of the greatest practical advantage and benefit'. *Western Canon Law* (London 1953), 18–19.

[84] These African canons were, of course, in Latin and so not directly usable for a Byzantine collection. Their addition in a Greek translation later in the sixth century may be explained as the result of Justinian's conquest of Northern Africa. They were later formally approved as sources of canon law by the Church of Constantinople, in the second canon of the Council *in Trullo* (691).

of view of Christian doctrine, the conciliar definitions of the faith were accepted in Rome and in Constantinople and one profession of faith, the Nicene Creed, was common to both Churches; but divergent views were becoming apparent with regard to church order and discipline.

In the *Dionysiana* we can see the firm foundations for a law based on papal decretals that was already developing in Rome and in the Western Church of the fifth century. The conscious exercise of the Roman primacy is particularly clear in the decretals of Pope Leo the Great (440–460) and Pope Gelasius II (d.496). The bishop of Rome was already exercising an increasingly centralized administrative government over the church in the West. In fact, the *Dionysiana* itself became a symbol and an effective instrument for the development of this ecclesiological vision. It was important not only juridically but also from a political-ecclesial point of view. Before this the Roman papacy had held a position of great prestige and played a primatial role, particularly in the West; but it did not yet have a *corpus canonum* that could take on importance for the whole of the Western Church. Popes, such as Leo the Great, in his famous *Tomus* at Chalcedon, and Gelasius in his well-known letter to the Emperor Anastasius II in 494 on the two powers that govern the world, had claimed supreme power. Dionysius did the bishop of Rome a great service by providing him with a legal instrument – which in those days was the best available – to enhance the role and the prestige of the Roman chancery.

When we turn to the final version of the *Synagoge* of John Scholastikos, a different picture of church government and administration emerges. While the conciliar canons remain the sacrosanct and unaltered foundation, there are two important differences. The first is the series of 'canons' from the two letters of St Basil the Great. This set a precedent for the inclusion of certain writings of the Fathers in the law-books of the Church – an innovation that was taken up and developed in the following century in Constantinople.[85] The second important difference lies in the inclusion of excerpts from imperial constitutions. This was probably done after John Scholastikos had been appointed patriarch of Constantinople, and it gave a clear and authoritative signal concerning the place the emperor should have in the general administration and government of the Church. In Constantinople, therefore, in addition to the conciliar canons there were two other sources for church law: the writings of the Fathers of the Church and imperial constitutions. In fact, Justinian considered himself responsible for religious discipline throughout the empire. No legal text gave the emperor such power, but it came to be generally accepted that he should be a sort of supervi-

[85] The same practice was later taken up in the West. As we shall see in Chapter Four, about a quarter of the canons in Gratian's *Decretum* are excerpts from the writings of the Fathers, especially from Augustine and Jerome.

sor of church affairs. Justinian's legislation became a constituent part of the Church's legal tradition in Constantinople.[86]

This reception of imperial laws into the Church's canonical collections was to have far-reaching effects on the development of canon law in the East. It had a particularly strong influence on the discipline of the clergy and on matrimonial law, as a few examples will illustrate. Justinian's style in imperial legislation about the clergy can be seen in his edict of 528 – only a year after becoming sole emperor – concerning the selection of candidates for the episcopate:

> Taking every forethought for the most holy churches and for both honor and glory of the Holy Immaculate and Consubstantial Trinity, through which we have believed that both we ourselves and the common polity will be saved, and also following the holy apostles' teaching ... by the present law we ordain that, so often as in any city whatever it should happen that the episcopal see is vacant, a vote by the persons inhabiting the said city should be taken concerning three persons who have borne a character for correct faith and holiness of life and the other virtues, so that from these the most suitable should be selected for the episcopate.[87]

Another clear example can be seen in the Justinian's legislation regulating the life of bishops. In the fourth and fifth centuries there were married bishops who lived as married men, though there were not very many, and the law did not prohibit this. The constitution we have just quoted about the election of bishops goes on to make it obligatory for bishops to observe continence and laid down that a candidate for the episcopacy should not have children or grandchildren.[88] Constitution 123 of 545 AD is a complete treatise on the life and behaviour of the clergy. It includes such laws as: a man could not marry after priestly ordination; married men could be ordained, though not if they had been twice married. The minimum age is established for episcopal and priestly ordination – thirty-five and thirty respectively.[89]

Marriage is treated extensively in Justinian's legislation. *Novella* 22 of 532 AD is a treatise on matrimonial law, and marriage is treated in a number of

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[86] J. Meyendorff comments on the 'practically unchallenged acceptance in the East of imperial legislation in the field of church administration'. He writes, 'No text ever gave the emperor the power to define or formulate these principles; but it was universally accepted that he had a responsibility for relating them to the empirical reality of history, and thus to manage, where necessary, the practical affairs of the visible Church. This is the meaning of the famous words attributed to Constantine – "I have been established by God as the supervisor of the external affairs of the Church" (*De Vita Constantini*, 4, 24 [PG, vol. 20, col. 1172]) – and consistently applied in the legislation of Justinian'. John Meyendorff, *Byzantine Theology. Historical Trends and Doctrinal Themes* (New York 1983), 82. This role of the emperor will be discussed in greater detail in Chapter Two.

[87] CJ, 25–26.

[88] Ibid. See also *Novella* 123, c. 1.

[89] *Novella* 123 c.1,1 and c.13.

other imperial constitutions.[90] The age of puberty is required for a valid marriage; by a legal presumption a boy of fourteen and a girl of twelve are considered to have reached puberty. Marriage between a Christian and a Jew is forbidden.[91] Holy Orders constitute a 'diriment impediment' to marriage.[92] While it is clear that the marriage of clerics already in major orders was unlawful in the fourth and fifth centuries, it is not clear whether or not such marriages, if they took place, were considered to be null. Justinian declared all such marriages invalid.[93] Justinian was also the first to introduce a law about spiritual relationship arising from baptism as a matrimonial impediment, though there had been a custom to this effect previously. This became a conciliar canon in the Council *in Trullo.*[94]

Divorce and re-marriage

Classical Roman Law had considered marriage and divorce a private matter that took place by the mutual consent of the parties. Marriage depended on the *maritalis affectio* – the desire to be husband and wife – and if this ceased, then the marriage could be terminated without much formality. The first Christian emperors did not change the law on divorce, though Constantine brought in laws that required specific reasons for a husband to divorce his wife. Justinian promulgated a law forbidding divorce by mutual consent, but his legal reforms permitted divorce in certain cases. Justinian's legislation influenced greatly the whole theory and practice concerning divorce in the Orthodox Church.[95] Meyendorff observes that while the possibility of divorce was an integral part of Byzantine civil law at all times, this was not openly challenged by the Church.[96] The Greek Fathers were fearless in challenging imperial power, but there is no evidence of their protesting against the legislation on divorce. There are no canons of the early councils that forbid divorce and re-marriage. The direction in which the Orthodox Church would in fact move can be seen in several of the 'canons' of St Basil the Great, who stated that divorce was not permitted 'save in the case of fornication' (μὴ ἐπὶ πορνείᾳ – 'except for unchastity'),[97] quoting

[90] *Novella* 111 in 542 AD; *Novella* 117 in 542 AD; *Novella* 134 in 556 AD.

[91] *Novella* 111 in 542 AD; *Novella* 117 in 542 AD; *Novella* 134 in 556 AD.

[92] A diriment impediment in canon law indicates a condition that renders a person unqualified for certain acts. For example, 'Those in sacred orders invalidly attempt marriage', *Code of Canon Law* (Rome 1983), canon 1087.

[93] CJ, 30 (Bk. I, 3.44).

[94] Council *in Trullo,* canon 53.

[95] *Novella* 117.

[96] J. Meyendorff, *Byzantine Theology,* 197. On the other hand, there is no evidence at this time that church authorities thought it morally permissible for a person to re-marry after divorce.

[97] Mt. 19: 9 'And I say to you: whoever divorces his wife, except for unchastity (πορνείᾳ), and marries another, commits adultery' (see also Mt 5:32, where the same expression occurs). As to what exactly the Greek word πορνεία means here, scholars are not agreed. Matthew's Gospel alone

the exception clause in St Matthew's Gospel (Mt 5:31–32, and Mt 19:9).[98] In his canonical letters he stated that a man not only may, but must divorce a wife guilty of πορνεία. St Basil readmitted a man to the community who had been divorced because of his wife's adultery and had re-married; after a long period of penance he was readmitted to the community and was permitted once again to participate in the Eucharist.[99] There is no convincing evidence to show that the Church formally and expressly prohibited divorce and re-marriage from the very beginning, and many Christians continued to regard marriage as dissoluble.[100] St Augustine was the first to formulate clearly the doctrine of the indissolubility of marriage. He stated plainly that the New Testament references to divorce authorized separation but not re-marriage, and this was the interpretation that would be strictly followed in the Latin Church in the West,[101] where

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has this famous exceptive clause – 'except it be for unchastity' – both in Mt. 5:32 and in Mt. 19:9. *Porneia* means unlawful sexual conduct, but there is no general agreement among scholars on the precise meaning of the word in this context. A recent Roman Catholic scholar, B. T. Viviano, writes: 'Three main solutions to the difficult problem are proposed for this clause. (1) The so-called Greek Orthodox solution holds that the clause contains a real exception to the absolute prohibition of divorce and second marriage. In this case Matthew's position would be the same as the Shammaites and different from Jesus'. A difficulty is that in this view the text should read *moicheia*, not *porneia* ... (2) The classic "Catholic" solution (Dupont [*Études sur les évangiles synoptiques*, Leuven 1985]) holds that the clause does not contain a real exception since it does not refer to divorce but to separation without re-marriage in the case of an adulterous wife (who in Israelite law would be stoned). Again, the text does not use the word for adultery. (3) In the "rabbinic" solution also the clause does not contain a real exception to the prohibition of divorce because the key term *porneia* is understood as translating the Hebrew *zĕnût, "prostitution"*, understood in the sense of an incestuous union due to marriage within forbidden degrees of kinship (Lev 18:6–18). Such a union would not be a true marriage at all and would not require a divorce but a decree of annulment. *Porneia*, as used in Acts 15:23–29, stands close to this; as does *zĕnût* in the Qumran documents (e.g. CD 4:20–21). This solution fits the text best; it represents Matthew's legal finesse and his loyalty to Jesus (see Bonsirven, *Le divorce;* H. H. Baltensweiler, *Die Ehe im NT* [Zurich, 1967] 87–102; J. Fitzmyer, *To Advance the Gospel: New Testament Studies* [New York 1981] 79–111)'. *The New Jerome Biblical Commentary* (London 1989), 643.

[98] St Basil, canon 9. M. Angold maintains that: 'St Basil was far and away the greatest influence on the church's teachings about marriage. By and large these had been absorbed into the mainstream of Byzantine life through their adoption by the civil law'. M. Angold, *Church and Society in Byzantium under the Comneni 1081–1261* (Cambridge 1995), 424. St Basil's answers are based on the customs of his Church of Caesarea. See in particular can. 9 and can. 21 of St Basil in the canonical collection of John Scholastikos. Through their inclusion in this collection, St Basil's letters became part of the official canon law of the Eastern Church and had a decisive influence on the development of canon law.

[99] Walter Kasper, *Theology of Christian Marriage* (London 1980), 55. Kasper refers to Basil, *Ep.* 217, 77 (PG, vol. 32, cols 804ff).

[100] See James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago and London 1987), 96–97.

[101] See P. Walsh (editor and translator), *De bono coniugali. De sancta virginitate* (Oxford 2001), 16–17.

prohibitions of re-marriage following divorce gradually became effective. The *Dionysiana* contained no clear legislation on the subject.

These are a few examples to indicate how much imperial constitutions were taken up with what we now consider purely ecclesiastical matters. As one writer has observed: 'The *Codex* and the *Novellae* contain a set of laws concerning the Church which cover a much wider range of ecclesiastical functions and activities than does the entire conciliar legislation before and after Justinian.'[102] This explains why John Scholastikos, in his second edition of the *Synagoge,* when patriarch of Constantinople, appended the eighty-seven 'canons' from this large body of Justinian's legislation.

Clerical celibacy

Finally, there is the place that clerical celibacy held in the canonical collections that we have been examining. That there were married priests in the Church is something that is presupposed in both the Latin West and the Greek East. Canon 5 of the Apostolic Canons states: 'Let not a bishop, presbyter or deacon put away his wife under excuse of religion; but if he put her away, let him be anathema.' Similarly canons in the Councils of Gangra, Neocaesarea and Carthage presuppose the existence in the Church of married clergy and these canons are contained in both the *Dionysiana* and in the *Synagoge.*[103] The *Dionysiana* does contain several papal decretals which lay down directives about clerical continence. Pope Siricius[104] and Pope Innocent I[105] counsel continence for all bishops, priests and deacons.[106] The first decretal in the collection of Dionysius is a letter that Pope Siricius sent to the Spanish bishop, Himerius, in 385. This letter presupposes that there were many married priests in the Church, and it counsels all such priests to observe perfect continence. In the Old Testament, the pope argued, priests were allowed to marry, but in the year of their service had to live in the temple far from their homes and had to abstain from sexual intercourse with their wives, so that they could offer to God offerings worthy of his acceptance. 'The period of their service having been completed, intercourse with their wives was permitted for reason of succession alone, because no one from a tribe other than that of Levi was to be admitted to the ministry of God'.[107] The pope implies that this is not the case in the Church. The priests of the New Testament are to observe continence from the day of

[102] J. Meyendorff, *Byzantine Theology,* 82.

[103] Gangra, canon 4; Neocaesarea, canon 8; Carthage canons 3 & 4.

[104] Pope Siricius, canon 7.

[105] Pope Innocent I, to Victricius, canon 16.

[106] 'Ritual continence', in the sense of their having to abstain from sexual intercourse on days when they were to preside at the celebration of the sacred rites of the Eucharist.

[107] Letter of Pope Siricius to Himerius, translated in R. Somerville and B. C. Brasington, *Prefaces to Canon Law Books,* 41.

their ordination. Dionysius also includes a decretal of Pope Innocent I which advocates continence for all priests. These decretals do not require that priests be celibate, but their directives requiring continence would in fact lead on eventually to a law requiring celibacy in the Church of the West. How the canonical legislation in East and West developed on this question will be discussed in more detail in the next chapter.

Conclusion

From this survey of sixth-century canon law in Rome and in Constantinople a few conclusions can be drawn. After the resolution of the Acacian Schism in the early part of the century (519 AD) there followed a lengthy period during which the same Christian faith, as articulated in the doctrinal decrees of the four ecumenical councils, – the Creed of Nicaea and Constantinople – was shared totally by both Rome and Constantinople, though many Christians in Egypt and in Syria had not accepted the decisions of Ephesus and Chalcedon.[108] There was full agreement concerning the nature of episcopal authority, about the sacraments of baptism, confirmation and the Eucharist, and in general on the qualities that should characterise the way of life of all who called themselves Christian. It is also interesting to note that the basis of church law at that time lay in the decisions of regional councils of bishops. All of these councils had been held in the Eastern part of the empire in the fourth and fifth centuries, yet the decisions of these regional councils were taken into the canonical collections and became the basis for canon law both in the East and in the West. This is particularly interesting in view of the current discussion in the Latin Church on the role of episcopal conferences in the Church's legislation.

There was unity in the profession of the Christian Creed, but this did not entail uniformity in all things. Full communion co-existed with significant differences in the ecclesiological vision of government within the Church, in administration and in discipline. The papal law of the Latin Church in Rome was moving steadily towards a more and more centralised, monarchical, form of administration. At the same time the Church in Constantinople was developing quite a different form of administration, stressing strongly the importance of the *symphonia* that should exist between the patriarch and the emperor within the Church. This diversity in unity seems to have been taken for granted at the time. So it is not at all surprising that in the *Synagoge* of patriarch John of Constantinople there is not a single decretal letter of the bishop of Rome, the patriarch of the West and acknowledged primate in the see of Peter. For the same reason there is no trace of Greek patriarchal decrees or imperial constitutions in the

[108] These Christians will be discussed in greater detail in Chapter Six.

Dionysiana. In matters of church discipline and liturgy, each patriarchate looked after its own affairs in its own way: *in dubiis libertas.*

As far as celibacy of the clergy was concerned, in the sixth century there was as yet no legislation on this subject in the East or in the West, though Dionysius did include some papal decretals which strongly counselled continence for priests, even if they were married. In the Eastern Church it was taken for granted that there would be a married clergy. There was as yet no direct legislation about divorce and re-marriage.

Each of the canonical collections we have examined formed the foundation for all later development of canon law in the patriarchate in which it had been produced. While they were products of a united Church, sharing the same faith in Christ and his sacraments, they embodied differing visions of what the external aspect of the Church should be like in its administration and discipline. These divergent visions would become more pronounced as time went on. Just how these differing visions were embodied in two important canonical collections, one in Constantinople and one in the West in the ninth century, will be the subject of the next chapter.

CHAPTER TWO

The *Nomokanon* and the False Decretals: Constantinople and Rome in the Ninth Century

Dionysius Exiguus in Rome and John Scholastikos in Constantinople laid the foundations for the serious study of canon law. They did this by making authoritative and reliable compilations and, in the case of Dionysius, accurate Latin translations of the Greek conciliar laws promulgated during the fourth and fifth centuries. But they did more than this. By the way they organized their collections and selected their material they not only laid the foundation for the development of canon law, they also provided clear indications of the direction this development would take – quite different directions for each of the two Great Churches: the development of a papal law in the West, on the one hand, and of synodal/imperial legislation in Constantinople, on the other. It is important to bear in mind that these diverse developments took place within the Church when Rome and Constantinople were still in full communion with each other. The sixth century had been a decisive period for the development of law. Justinian had laid firm foundations for the study and development of Roman/Byzantine law with the *Corpus Iuris Civilis* and Dionysius Exiguus and John Scholastikos had done the same for canon law.

Another key century for the development of church law, both in the East and in the West, was the ninth century. An examination of the two most influential ninth-century canonical collections clearly shows how the basic work done by Dionysius Exiguus and John Scholastikos was enlarged and developed. The two collections are the Pseudo-Isidorian Decretals in the West and the so-called *Nomokanon of Photius* in Constantinople. Each of them respectively constitutes a remarkable development and enlargement of its sixth-century predecessor. These two collections have been chosen because the *Nomokanon of Photius* was the quasi-official code of canon law for the Byzantine Church in the ninth century, and the Pseudo-Isidorian Decretals, while not an official collection, constituted a comprehensive compendium of canons and papal letters concerning almost every aspect of church law, illustrating very clearly the direction in which canon law was developing in the Western Church. In this chapter I shall describe the origins and the composition of each collection, showing what they have in common and how they differ from each other. Finally, I shall offer an assessment of their influence on the life of the Church, more specifically in

what concerns church administration, the life of the clergy and some aspects of matrimonial legislation.

The *Nomokanon in XIV Titles*[1]

I begin with the official compendium of canon law in ninth-century Constantinople: the *Nomokanon in XIV Titles*. An edition of this *Nomokanon* had been published in 882. It will be useful at this point to see where this canonical collection had come from. Byzantine canon law developed steadily in the centuries following Justinian's codification of 529–534 and the *Synagoge* of John Scholastikos. This was due to further legislation by church authority and by new imperial legislation, but the precise way in which it developed was influenced by individual canonists who made compilations which were subsequently taken over and approved by the authorities. This is how the *Nomokanon in XIV Titles* came into existence. The method used by John Scholastikos was taken up and modified by a canonist in Constantinople towards the end of the sixth century, who made a new collection consisting of three parts. Part I was a new systematic arrangement in which John's fifty titles were reduced to fourteen.[2] Under each title canons which were relevant to the subject matter of the title were listed but the text of the canon was not given. For the text of the canons the reader was referred to Part II of the collection which was a compilation of all the canons from the councils arranged in chronological order. The canons from John Scholastikos' *Synagoge* were included with a number of additions: the canons from a Council of Constantinople (394) and of the Council of Carthage of 419, which Dionysius had included in his Roman collection. Along with these conciliar canons this unknown canonist added a series of extracts or 'canons', taken from the writings of twelve Fathers of the Eastern Churches. This was an important innovation which invites comparison with Dionysius' adding his collection of extracts from papal decretal letters in his canonical collection in Rome a century earlier. Part Three consists of a collection of civil law, probably taken from an existing collection of Roman Law, the *Tripartita*.[3]

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[1] *Nomokanon* was the name given to a collection of church laws that contained both the canons passed by episcopal synods and imperial legislation on church matters. For a brief account of the development of the *Nomokanon*, see C. De Clercq in DDC, vol. 2, cols 1171–1177.

[2] A list of the fourteen titles is given in Appendix Three.

[3] The *Collectio Tripartita* is a collection of civil law texts dealing with ecclesiastical subjects. As its name suggests, it is divided into three parts. The first section contains a Greek version of the first thirteen titles of the first book of the *Codex Justinianus*, along with four Greek constitutions. The second section contains Greek summaries of texts from the *Digest* and the *Institutes*. The third part contains the first three titles of a version of the *Novellae* by the late-sixth century Athanasius of Emessa. See N. van der Wal and B. H. Stolte (editors), *Collectio Tripartita. Justinian on Religious and Ecclesiastical Affairs* (Groningen 1994), xiv.

This new collection is an improvement on previous Eastern collections in a number of ways. The canons can be arranged systematically under the fourteen headings in the titles and can be referred to on more than one occasion, if required, by a simple reference to the complete chronological collection in Part II. It contains a larger number of canons, including the African canons. It is not known where the selection of 'canons' from the Fathers originated. Nor is it known who first had the idea of adding a *florilegium* from the Fathers in a canonical collection. John Scholastikos had in fact pointed in this direction when, as we have seen, he included extracts or 'canons' from two letters of St Basil the Great in his *Synagoge*. However, the canonist who first put this collection of 'patristic canons' together firmly established the foundation for the future development of Eastern canon law. His 'canons' from these twelve Fathers remain an important part of the canon law of the Eastern Orthodox Churches even today. The idea of introducing into the law-collections the teaching of a private person – whatever his prestige – and putting this teaching on the same level as officially promulgated canons and constitutions of the lawgivers is an important phenomenon and one which shaped the whole development of Byzantine canon law. Some think that the idea may have its origin in the patriarchate of Alexandria, where collections of patriarchal letters seem to have been in circulation.[4] If this were the case, it would provide some explanation for the fact that six of the Fathers included in this new collection were, in fact, archbishops of Alexandria.[5]

There is a similarity here with the 85 *Canones Apostolorum*, which John Scholastikos had included in his *Synagoge*, and which, though not conciliar canons in the strict sense, were included in the canonical sources because they were thought to embody apostolic traditions. When John Scholastikos appended a series of extracts from the letters of St Basil the Great to his collection of conciliar canons he had a sound precedent for doing so. The Church stressed consistently strict adherence to traditional doctrine, and orthodox tradition was based on the authority of Holy Scripture, in the first place, and on how the Scriptures had been interpreted by the Fathers of the Church. Doctrine had always to be in harmony with the teaching of the Fathers and of the holy ecumenical synods. 'In any doctrinal dispute the *ipsissima verba* of the Fathers had

[4] Charles De Clercq, DDC, vol. 2, 1170. The question of including with the conciliar canons excerpts from the writings of the Fathers is treated in the first prologue to the ninth-century edition of the *Nomokanon*. The writer commends this practice because of the wisdom and spiritual authority of these holy Fathers and the great respect in which they are held by all. See J. B. Pitra, *Iuris Ecclesiastici Graecorum Historia et Monumenta*, vol. II (Rome 1868), 446–447.

[5] Later, in the West, we shall see the Fathers being quoted in the canonical collections. In Gratian, for example, there are many texts from St Ambrose, St Augustine, St Jerome and other Fathers. See C. Munier, *Les Sources Patristiques du droit de l'Église du viiie au xiii siècle* (Mulhouse 1957).

the power to overwhelm the novelties (καινοφωνίαι) of heretics'.[6] It was for this reason that anthologies of extracts from the Fathers became common and were used at almost all the early councils.[7] John Scholastikos simply began the custom of doing the same thing for canon law. In the following century this custom was extended when extracts from the writings of twelve of the Fathers were appended to the collection of canons and ended up by becoming part of the canon law of the Eastern Church. This is clearly stated in the second canon of the Council *in Trullo*, as will be seen shortly.

The introduction of much more civil law into these collections is not surprising: a large number of the constitutions in the *Codex* and in the *Novellae* of Justinian deal specifically with church matters. Around about the year 630, this *Synagoge in XIV Titles* underwent an important transformation. A jurist in Constantinople, referred to as Enantiophanes, transformed the *Synagoge* by combining canons and civil laws together. He took the excerpts of the ecclesiastical laws (that is to say, civil imperial constitutions) from Part III of the *Synagoge* and placed them under the appropriate Titles of Part I. This meant that the conciliar canons and the ecclesiastical laws or constitutions were now put together in the collections. Hence the name of *nomokanon* – which only came into use much later – since laws (*nomoi)* and canons were placed together. This was an important development in Byzantine law. Putting imperial constitutions side by side with the canons of church councils suggests a certain equality in law between the strictly church legislators and the emperor. For this reason it was inevitable that the collections of church law turned into *Nomokanons*.[8] The imperial ecclesiastical laws were to be seen just as authoritative for the Church as the canons issued by church councils. This makes an important ecclesiological statement concerning the place of the emperor in the Church, an idea that would be developed by Theodore Balsamon, as we shall see.

In mid-seventh century Constantinople there were two main canonical collections in use, both arranged into fourteen sections or 'titles': the *Synagoge in XIV Titles* (c.580), and the *Nomokanon of XIV Titles*. These contained the following canons: the 85 *Apostolic Canons*; the canons of the ecumenical councils: Nicaea I, Constantinople I, Ephesus and Chalcedon; the canons of the seven regional councils which, as we have seen, were included in the earlier collections: Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, Sardica, Constantinople (394); canons of the regional council of Carthage (419). After the conciliar

[6] Alexander Alexakis, *Codex Parisinus Graecus 1115 and Its Archetype*. Dumbarton Oaks Studies 34 (1996), 5. This is a well-documented discussion of the use of patristic *florilegia* in church councils.

[7] Sometimes whole documents were used, as, for example, the use of St Cyril's letter to Nestorius and Pope Leo's Tome at the Council of Chalcedon.

[8] The term *Nomokanon* came into use only in the 11th century.

canons, the 'canons' taken from the writings of twelve Fathers of the Eastern Churches:[9]

St Dionysius the Great, Bishop of Alexandria (248–264)	8 canons
St Peter, Bishop of Alexandria (300–311)	15 canons
St Gregory Thaumaturgus, Bishop of Neocaesarea (213–270)	11 canons
St Athanasius, Bishop of Alexandria (328–373)	3 canons
St Basil the Great, Bishop of Caesarea (370–379)	93 canons
St Gregory, Bishop of Nyssa (330–395)	8 canons
Timothy, Bishop of Alexandria (375–385)	72 canons
Theophilus, Bishop of Alexandria (385–412)	14 canons
St Cyril, Bishop of Alexandria (412–444)	7 canons
St Gregory Nazianzen, Bishop of Constantinople (381–389)	1 canon
St Amphilochius, Bishop of Iconium (340–395)	1 canon
Gennadius, Bishop of Constantinople (fl.471)	1 canon
The synodical letter of St Cyprian on the re-baptism of heretics.	

During the seventh century both the *Synagoge* and the *Nomokanon* were frequently copied – integrally or in separate sections – and augmented in a variety of ways. The result of the activity of these compilers in the seventh century was that when the bishops assembled together in Constantinople in 691 for the Council *in Trullo*, they would have had to hand the canonical collection that is in fact the chronological collection that formed Part II of the *Synagoge in XIV Titles*. This is clear from the list of sources of law that is given in the second canon promulgated by that council.[10] The canons promulgated by the Trullan Council in 692 are of key importance in the development of Byzantine church law. The council was convoked by Justinian II as a supplement to the fifth and sixth ecumenical councils (Constantinople II in 553, condemning the Three Chapters, and Constantinople III in 680–681, convoked to settle the controversy over monothelitism). These councils had passed doctrinal decrees but they had not promulgated any disciplinary canons. The emperor decided that, at the end of the seventh century, there was need for a revision and updating of the canon law, so he called a council to carry out this revision. Because it was considered

[9] These 'canons' from the Fathers can be found in RP, vol. 4; in P.-P. Joannou (editor), *Discipline Générale Antique (IIe – IXe s.)*, vol. II, *Les canons des Pères Grecs* (Rome 1962). Also, PG, vol. 138, cols 455–936 (with a Latin translation).

[10] It is called the Synod *in Trullo* because it was held in the domed hall ('troullos'/cupola) of the emperor's palace in Constantinople. Editions of the 102 Trullan canons in Greek can be found in RP, vol. 2, 295–554; P.-P. Joannou, *Discipline Générale*, vol. I, 1, *Les canons des conciles oecuméniques*, 101–241 (in Greek, Latin and French); G. Nedungatt and Michael Featherstone, *The Council in Trullo Revisited* (Rome 1995), 43–185 (in Greek, Latin and English); as well as the text and translation of the Trullan canons, this volume contains a series of essays on different aspects of the Council *in Trullo*.

to be the canonical supplement of the fifth and sixth councils, the Council *in Trullo* is often referred to as the *Quinisext.* Moreover, since it is considered as a part of these councils, it shares their ecumenical authority. For the Byzantine Orthodox Church, therefore, the collection of canons promulgated by this council has the authority of laws promulgated by an ecumenical council, and can be abrogated only by another ecumenical council.[11]

The Council *in Trullo* promulgated 102 canons aimed at reforming the discipline of the Church.[12] In some of these a divergence from, and antagonism towards, Rome are clearly visible.[13] For this reason the canons were not at first accepted by Rome, and Pope Sergius I (687–701) refused to sign the acts of the council. Later popes agreed to accept the Trullan canons, but only insofar as they were not contrary to Roman customs.[14] These Trullan canons are important

[11] On the Trullan Council, see V. Laurent, 'L'oeuvre canonique du Concile *in Trullo* (691–692), source primaire du droit de l'Église Orientale', *Revue des Études Byzantines,* 25 (1965), 7–41. Heinz Ohme, *Das Concilium Quinisextum und seine Bischofsliste: Studien zum Konstantinopolitan Konzil von 692* (Berlin and New York 1990). This is a critical edition of the list of the signatories to the Trullan canons of 692 – 225 bishops headed by the signature of the emperor Justinian II. J. M. Hussey, *The Orthodox Church in the Byzantine Empire* (Oxford 1986), 24–29. H. Ohme, 'Begegnung zwischen Ost und West in den Kanones des Concilium Quinisextum', *Atti del Congresso Internazionale: Incontro fra Canoni d'Oriente e d'Occidente* (Bari 1994), vol. 2, 101–122; C. Gallagher, 'Sacri Canones nel *Decretum* di Graziano', *Ius in Vita et Missione Ecclesiae* (Vatican 1994), 762–771. Dimitri Salachas, 'La Normativa del Concilio Trullano commentata dai canonisti bizantini del XII secolo', *Oriente Cristiano* 2–3 (1991), 3–103.

[12] Canons 1–2, confirming previous legislation; canons 3–39, concerning the clergy; canons 40–49, concerning monks; canons 50–102, concerning the laity.

[13] Most of the canons simply renewed the legislation of previous councils, but a few were directly opposed to the usages of the Church at Rome. For example, canon 13, which permitted priests and deacons to live as married men, claiming that this was more in keeping with the strict apostolic tradition; canon 36, which repeated canon 2 of the First Council of Constantinople and canon 28 of the Council of Chalcedon, which granted Constantinople privileges 'equal to those of the see of older Rome'; canon 55, which proscribed the Roman practice of fasting on Saturdays in Lent; canon 67, which stipulated that one had to abstain from blood and from what is strangled, a usage permitted in the Western Church; canon 82, which forbade that Christ be portrayed as a lamb, another Western custom. This is, admittedly, a small number of canons, but they betray an aggressive stance towards Rome which was new and which was unacceptable in Rome. See V. Laurent, op. cit., 32–33.

[14] Pope John VIII (872–882) formulated the approach that would be taken at Rome towards the Trullan canons. 'Ergo regulas quas Graeci a sexto synodo perhibent editas ita in hac synodo [i.e. Nicaea II, 787] principalis Sedes admittit ut nullatenus ex his illae recipiantur quae prioribus canonibus vel decretis sanctorum Sedis huius pontificum aut certe bonis moribus inveniuntur adversae'. ('Therefore the principal See accepts in this synod [i.e. Nicaea II of 787 AD] the regulations that the Greeks claim were produced by the sixth synod, but in such a way that on no account are those accepted which are found to be opposed to earlier canons or decrees of the holy pontiffs of this See or which are certainly contrary to sound morals'). Anastasius Bibliothecarius quotes these words of Pope John VIII in his introduction to the *Acta* of the Second Council of Nicaea. See V. Laurent, op. cit., 36. The Patriarch Tarasius, at this Second Council of Nicaea, claimed that the Trullant canons belonged with the Sixth Ecumenical Council, the Third Council of Constantinople (681), as a supplement. This is now generally accepted. See Heinz Ohme, 'Die sogenannten

for our purpose because the ecclesiological vision they reflect shows a different perception of ecclesial order from that seen in the canonical collections of the West.[15] The second Trullan canon is of key importance because it provides – for the first time in a general council – an official list of the canonical sources that are to be observed in the Church (Antioch and Alexandria were also represented at the council as well as a number of bishops from the Latin West).[16] The canon reads as follows:

> It is the most noble and serious resolve of this holy council that the eighty-five canons which have come down to us under the name of the holy and glorious Apostles, received and confirmed by the holy and blessed Fathers before us, should henceforth remain firm and secure, for the healing of souls and curing of passions. But whereas we are commanded in these canons to accept the constitutions of the same holy Apostles transmitted by Clement, in which certain spurious passages, foreign to true piety, have been inserted to the detriment of the Church by heretics, obscuring from us the comely beauty of divine doctrines, we have accordingly rejected these constitutions, for the edification and security of the most Christian flock, in no wise admitting the notions of heretical falsehood, nor inserting them in the genuine and perfect teaching of the Apostles.[17]
>
> We confirm also all the other sacred canons which have been set forth by the holy and blessed Fathers, that is of the three hundred and eighteen holy Fathers who assembled in Nicaea, and of those in Ancyra; also of those in Neocaesarea, as well as those in Gangra; furthermore, of those in Antioch in Syria, and also of those in Laodicea in Phrygia; moreover, of the hundred and fifty who gathered in this God-guarded imperial city,[18] of the two hundred who came together first in the Metropolis of Ephesus, and of the six hundred and thirty holy and blessed Fathers in Chalcedon; likewise, of those in Sardica;[19] furthermore of those in Carthage;[20] moreover, of those who came together the second time in this God-guarded imperial

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"antirömischen Kanones" des Concilium Quinisextum (692) – Vereinheitlichung als Gefahr für die Einheit der Kirche', G. Nedungatt and M. Featherstone, *The Council in Trullo Revisited,* 307–321.

[15] See G. Every, *The Byzantine Patriarchate, 451–1204* (London 1962), 102–112.

[16] The bishops who took part were almost all from Eastern dioceses. Rome did not send a delegation but there were some Western bishops present.

[17] The *Apostolic Constitutions* was a collection of ecclesiastical regulations, probably originating in Syria from the last quarter of the fourth century. It was rejected by *Trullo* because of alleged Arian tendencies. The 85 *Apostolic Canons* formed an appendix to Chapter VIII.

[18] This was the Ecumenical Council of Constantinople I, 381.

[19] A council summoned to Sardica (modern Sofia in Bulgaria) by the Emperors Constans and Constantius c.343 to settle the orthodoxy of St Athanasius. See H. Hess, *The Canons of the Council of Sardica 343 AD* (Oxford 1958); L. W. Barnard, *The Council of Sardica 343 AD,* (Sofia 1983). These canons were controversial and not accepted by everyone in the East.

[20] These were the canons approved by the Council of Carthage in 419, but which included canons passed by African Councils between 393 and 419. These same canons were those included in the *Dionysiana,* mentioned in the last chapter.

> city under Nectarius of this imperial city,[21] and Theophilus, formerly archbishop of Alexandria; also of Dionysius, formerly archbishop of the great city of Alexandria; of Peter, formerly archbishop and martyr of Alexandria; of Gregory the Wonderworker, formerly bishop of Neocaesarea; of Athanasius, archbishop of Alexandria; of Basil, archbishop of Caesarea; of Gregory, bishop of Nyssa; of Gregory the Theologian; of Amphilochius of Iconium; of Timothy the First, formerly bishop of Alexandria; of Cyril, also archbishop of the great city of Alexandria; of Gennadius, formerly patriarch of this God-guarded imperial city; and also the canon set forth by Cyprian, formerly archbishop and martyr of the land of the Africans, and by the council under him, which canon has remained in force only in the regions of the aforesaid bishop, in accordance with the custom handed down to them.[22] No one shall falsify the preceding canons, nor reject them, nor receive any others than these here set forth, those composed spuriously by certain men who have attempted to traffic in the truth. If anyone is found innovating or trying to subvert any of the aforementioned canons, he shall be liable under the same canon, receiving the penalty it prescribes and being corrected by the very thing against which he has transgressed.'[23]

All the canons listed here are those sanctioned by the authorities and this second canon of the Trullan Council was confirmed by the first canon of the Second Council of Nicaea in 787.[24] The canon lists exactly the same canonical sources that were to be found in the chronological section of the *Synagoge in XIV Titles,* thus investing with ecumenical authority the canonical collection that we have been examining. So the unknown canonist who, towards the beginning of the seventh century, put together the collection of the 'canons' of the twelve Eastern Fathers had his work officially taken over and promulgated by a council.

In the ninth century a new edition of the *Nomokanon in XIV Titles* was produced in Constantinople about the year 882.[25] It is known as the *Nomokanon of*

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[21] A second council held in Constantinople under Nectarius, Bishop of Constantinople, and Theophilus, Archbishop of Alexandria, in 394. It was called to settle an appeal to Rome by Bishop Gabadius. Pope Siricius had charged Rome and Constantinople to settle the dispute. Gabadius was restored to his see.

[22] This was a canon demanding the re-baptism of schismatics, on the ground that no one outside the Church could administer her sacraments.

[23] English translation from G. Nedungatt and M. Featherstone, *The Council in Trullo Revisited,* 64–69.

[24] 'We joyfully embrace the sacred canons and we maintain complete and unshaken their regulation, both those expounded by those trumpets of the Spirit, the apostles worthy of all praise, and those from the six holy universal synods assembled locally for the promulgation of such decrees, and from our holy fathers'. Nicaea II (787), canon 1. DEC, vol. I, 139. Ivan Žužek argues that the opening paragraphs of the apostolic constitution, *Sacri Canones*, in 1990, is virtually a recognition of the importance of the Trullan canons by Pope John Paul II. See Ivan Žužek, 'Common Canons and Ecclesiastic Experience in the Oriental Catholic Churches', *Understanding the Eastern Code* (Rome 1997), 234–235.

[25] The most recent edition of the *Nomokanon,* without the chronological collection of canons, is by J. B. Pitra, *Iuris Ecclesiastici Graecorum historia et monumenta* (Rome 1864–1868), vol. II,

Photios, and the preface is attributed to him, though there is little evidence that the patriarch had himself anything directly to do with the edition. This new edition augmented the collection by adding the canons that had been promulgated by councils in Constantinople since the first *Synagoge* (c. 630). The following canons were added in the so-called 'Photian' edition: the 102 canons of the Council *in Trullo*; twenty-two canons of Nicaea II (787); the seventeen canons of the 'Photian Council' of 861; the three canons of the second 'Photian Council' in 879 – the council that confirmed Photios as Patriarch. Having described the structure and contents of the so-called *Nomokanon of Photios*, which was the quasi-official lawbook of the Church of Constantinople, I will now describe how canon law was developing in the West.

The State of the Church in the Frankish Kingdoms

Fully to understand the meaning and importance of the Isidorian Decretals it is necessary to have some knowledge of the state of the Church in Western Europe in the ninth century and the circumstances of the Frankish kingdoms in which they were produced. On Christmas Day, 800 AD, Charlemagne was in St Peter's Basilica in Rome, a pilgrim at the shrine of the Apostle on the eighth centenary of Christ's birth. Pope Leo III placed a crown on his head and he was acclaimed emperor by the Roman congregation in the basilica. This was a recognition by the bishop of Rome of the extensive and formidable power that Charlemagne had acquired and of the empire that he had built up in the West. In fact, Charlemagne made no claim to usurp the imperial title of the emperor at Constantinople. The pope and Charlemagne continued to recognize the legitimacy of the Byzantine emperor. However, the coronation of Charlemagne was resented in Constantinople. For the people of Constantinople – the true *Rhomaioi* – there was only one Roman Emperor, and he was not Charlemagne in his 'imperial' palace at Aachen.

Charlemagne had inherited a reform movement that had been begun and carried on by his predecessors on the Frankish throne all through the second half of the eighth century. The aim of this Carolingian Reform had been to raise the standards of church life. The main problems were the decadent state of the clergy and the spoliation of church property by secular authorities. The reform-

445–637. For the Greek text of both parts of the collection, along with the commentaries by Zonaras and Balsamon, see RP, vols 1–4. An edition of Part I was published by G. Voellus and H. Justellus, *Bibliotheca iuris canonici veteris* (Paris 1661). This has been superseded by the two later editions, but it is reproduced, *Nomokanon cum commentariis Theodori Balsamonis Patriarchae Antiocheni,* in PG, vol. 104, cols 975–1218. Part II, the chronological collection of canons, is published in PG, vols 137 and 138. The two parts are separated in this way in Migne's Patrology because the *Nomokanon* is listed under the works of Photios, whereas the chronological collection is included under the writings of the twelfth-century commentator, Theodore Balsamon.

ers attempted to remedy the situation through a reorganization of the hierarchy, the restoration of discipline within the Church and the restoration of church property to its rightful uses.[26] Charlemagne continued and intensified this reform movement. He promoted a renewal of ecclesiastical legislation and this was promoted by numerous episcopal synods. It was in this context that, at Pavia in 774 AD, Pope Hadrian I (772–795) presented Charlemagne with a collection of canons and papal decretals that was, in fact, an enlarged version of the *Dionysiana*. This version contained all the canons of the sixth-century Dionysian collection, but it included also a larger number of papal decretals. It became known as the *Dionysio-Hadriana* and was received as the quasi-official code of reform for the Frankish Church.[27] This was later augmented by a substantial body of canons from regional Spanish councils, taken from a larger canonical collection put together in Spain in the seventh century and known to us as the *Hispana*.[28] In this way the ancient Greek canons and early papal decretals were firmly incorporated into the developing legislation of the Church in the West.

One of the aims of the Carolingian reformers had been to counter the confusion that had been introduced by a series of collections known as the Penitentials. These were manuals for confessors which set out the sort of penances that should be given for various sins. The number of days, months or years of fasting or other mortifications was indicated for each sin, as a series of tariffs. The

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[26] For a discussion of the church reforms carried out by the Carolingians, see R. McKitterick, *The Frankish Kingdoms under the Carolingians* (London and New York 1983), especially 53–76.

[27] See P. Fournier and G. Le Bras, *Histoire des Collections Canoniques en Occident depuis les Fausses Décrétales jusqu'au Décret de Gratien* (Paris 1931–1932) 36–37. This collection begins with a dedication by Pope Hadrian to Charlemagne. It opens with the *Canones Apostolorum*, (noting that they were not of universal application). Along with the conciliar canons it includes the two creeds of Nicaea and Constantinople as well as the definition of faith of Chalcedon. It also gives the names of the bishops who signed the *acta* of a number of the councils. In the second part, in addition to the Dionysian decretals, there are decretals issued by the following popes: Zosimus (417–418), Leo I (440–461), Hilary (461–468), Simplicius (468–463), Felix (483–492), Symmachus (498–514), Hormisdas (514–523) and Gregory II (715–731). See A. Stickler, *Historia Iuris Canonici*, 108. There is an edition by J. Hartzheim, *Collectio Dionysio-Hadriana, Concilia Germanica*, I (Cologne 1759), 131–235; an edition by F. Pithoeus, *Codex Canonum veteris Ecclesiae Romanae* (Paris 1609).

[28] The *Collectio Hispana* can probably be dated to the beginning of the seventh century in Spain at the time of the Fourth Council of Toledo in 633. Since the ninth century this collection has also been called the *Isidoriana*. The collection may have been sanctioned by the Spanish hierarchy. St Isidore of Seville may well have played an important part in its compilation and written the preface to it. It was the canonical collection for the Spanish Church from the seventh to the eleventh century. It was taken over to form part of the Pseudo-Isidorian Decretals and because of this had a profound influence on medieval canon law right up to the *Decretum* of Gratian. See B. E. Ferme, *Introduzione allo Storia del Diritto Canonico*, 97–99. A. Stickler, *Historia Iuris Canonici*, 78–84. There is a recent critical edition by G. Martínez Diez, *La colección canónica Hispana*, vols 1–4 (Madrid-Barcelona 1966–1984).

Penitentials originated in the Celtic Church in the sixth century, and Irish missionaries introduced them to the Anglo-Saxons and the Franks. They were the work of individuals and never officially issued by the church authorities. St Columbanus brought the Irish penitential system to the Continent, where it developed in the eighth century into a number of Frankish Penitentials.[29] St Columbanus states the purpose of the Penitential:

> True penance is not to commit things deserving of penance but to lament such things as have been committed. But since this is undone through the frailty of many, not to say everyone, the measures of penance need to be known. A scheme of these has been handed down by the holy fathers, so that in accordance with the greatness of the offences the length of the penances should be ordained.[30]

There were different penances for monks and for clerics and for lay people. 'The usual forms of self-mortification enjoined were fasts of varying intensity and duration, deprivation of sleep, multiple genuflections and recitations of psalms, long periods of standing or of silence, different degrees of discomfort at night, beatings and, of course, sexual abstinence'.[31] According to the Penitential of Columbanus, if a layman 'has had a son by another man's wife, committing adultery in violating his neighbour's bed, let him do penance for three years, refraining from the more appetizing foods and from his own wife'.[32] Other penances could take the form of almsgiving, releasing slaves, pilgrimage and even exile.[33] In fact, the Penitentials introduced some novel ideas into the canon law of the Church which now began to be directly concerned with penal discipline, using temporal and spiritual sanctions. They are an interesting witness to the

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[29] See L. Bieler (editor), *The Irish Penitentials* (Dublin 1963); J. Gaudemet, *Les sources de droit de l'Église en occident*, 123–127. There was also a Greek Penitential being used in the Eastern Church in the ninth century. This was attributed to Patriarch John the Faster (d. 595), but scholars are now agreed that it must be dated not earlier than the ninth century. See A. Kazhdan, ODB, vol. 2, 1049; for the text of this, see PG, vol. 88, cols 1889–1918. E. Herman, 'Il più antico penitenziale greco,' *Orientalia Christiana Periodica*, 19 (1953), 71–127.

[30] 'Paenitentia vera est paenitenda non admittere sed admissa deflere. Sed quia hanc multorum fragilitas, ut non dicam omnium, rumpit, mensurae noscendae sunt paenitentiae, quarum sic ordo a sanctis traditur patribus ut iuxta magnitudinem culparum etiam longitudo statuatur paenitentiarum'. L. Bieler, *Irish Penitentials*, 97.

[31] John Mahoney, *The Making of Moral Theology* (Oxford 1987), 10.

[32] 'Si quis laicus de alterius uxore filium genuerit, id est adulterium commiserit toro proximi sui violato, iii annis paeniteat abstinens se a cybis succulentioribus et a propria uxore, dans insuper praetium pudicitiae marito uxoris violatae, et sic culpa illius per sacerdotem abstergatur.' L. Bieler, *Irish Penitentials*, 102.

[33] 'If any cleric commits murder ... he must become an exile from his country for ten years and do penance seven years in another city, three years of this time on an allowance of bread and water and salt, and for four years he shall abstain from wine and meat, and fast during the forty-day periods on bread and water and salt'. *The Penitential of Finnian* (the earliest Irish Penitential) in L. Bieler, *Irish Penitentials*, 75.

state of moral theology in those centuries: much attention was given to superstition, magic and sexual deviation.[34]

The Carolingian reformers did their best to suppress the Penitentials and many diocesan and provincial councils forbade their use. 'The synod of Chalon-sur-Saône in 813 wrathfully denounced the *libelli* called Penitentials, of which the errors are certain, the authors uncertain.' That of Paris in 829 ordered the bishops to seek out these 'booklets written against canonical authority and give them to the flames, that through them unskilled priests may no longer deceive men'.[35] The criticism was based on the fact that these collections had no canonical authority and contained a lot of unacceptable practices. They were individualistic and arbitrary, differing among themselves about the penances that should be given for the same sin. Some of them contradicted important provisions of Western canon law; for example, in allowing marriage after divorce in certain cases.[36] Also the system and practice of commuting penances left itself wide open to serious abuses.[37]

The Carolingian reform movement did much to restore the heritage of the Early Church and it tied the Frankish church more closely to Rome. But after the death of Charlemagne in 814 and the division of his empire, the reforming spirit lost much of its effectiveness. There was no longer a strong central government to hold Charlemagne's empire together. Church property became more and more under the control of secular rulers. Kings treated bishops as their vassals. They kept bishoprics vacant for long periods, while taking over the administration of their revenues. They had bishops appointed and removed as they pleased. In this way bishops became more dependant on civil rulers and were helpless against a secular power that ignored church law. That the knowledge and observance of the canon law had been an important aim of the Carolingian Reformers is clear from the numerous manuscripts containing Latin canon law

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[34] For a discussion of sexual morality according to the penitentials, see John T. Noonan, *Contraception* (New York 1967), 190–210.

[35] J. T. McNeill and H. M. Gamer, *Medieval Handbooks of Penance* (New York 1990), 27.

[36] The seventh-century Penitential attributed to St Theodore of Tarsus, Archbishop of Canterbury (668–690) permitted divorce and re-marriage in certain circumstances. J. T. McNeill and H. M. Gamer, *Medieval Handbooks*, 195.

[37] Long penances could be substituted by short and severe austerities and a system of commmutations was developed. 'In this class may be mentioned various kinds of vigils accompanied by fatiguing postures and means of ensuring bodily discomfort or mental distress to prevent sleep. Thus in the Old Irish *Table of Commutations* we have reference to sleeping in water, on nettles, on nutshells, with a corpse in a grave, in a cold church and in a secret chamber'. J. T. McNeill and H. M. Gamer, *Medieval Handbooks*, 32. It also became possible for a penitent to pay others to share his penance or do it for him. See J. T. McNeill, *A History of the Care of Souls* (London 1952), 122–124, cited by John Mahoney, *The Making of Moral Theology*, 11. Mahoney comments: 'It was this ominous connection, for the best of intentions, between money payments and the remission of punishment which was to contribute eventually to the trafficking in indulgences, and lead many penitents and pilgrims to Rome – and many protesters to Wittenberg'.

that were written in the Frankish kingdoms in the eighth century.[38] There were many canonical collections available to the Carolingian Reformers.[39] Many of these canons, however, were considered either irrelevant or inadequate in the changed circumstances of feudal Europe in mid-ninth century.

A number of reform synods had been held, and attempts at reform made. These had proved unsuccessful, yet the needs were urgent. The institution of proprietary churches, for example, was a source of particular difficulties and widespread abuses. The term refers to the system of private ownership of churches and monasteries that developed in the feudal Europe of the seventh and eighth centuries. 'The essential features were control of the temporal possessions *(ius proprietatis)* and the right to nominate the priest, abbot, and in some cases the bishop'.[40] The fact that the proprietor also had a share in the income of the benefice was widely abused and led to the neglect of the spiritual function of the church. How could this system be corrected? How could the Frankish bishops be protected against domination by increasingly powerful civil authorities? How could the clergy be freed from having to perform secular duties, such as military service, for the nobles? Lastly, how could the Church be effectively reformed from within through wise government by the diocesan bishop? To meet urgent needs such as these, a new approach was needed and new methods were called for. The existing canonical collections seemed inadequate to meet the problems.

The False Decretals

It was in these circumstances that, somewhere in northern France – in Rheims, perhaps – a canonist of genius devised a new and original approach to the difficulties.

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[38] The earliest Gallo-Frankish collection, that we know of, arranged on systematic lines, is what is now called the *Collectio Vetus Gallica.* It used to be called the *Collectio Andegavensis.* See A. Stickler, *Historia Iuris Canonici,* 103. This probably originated in Lyons about the year 600 and seems to have been widely disseminated within the Carolingian empire. The extant manuscripts go back to the late eighth century and the ninth. It was known, along with the *Dionysio-Hadriana,* at Charlemagne's court. For an edition of the eighth-century revised text of this collection, see H. Mordek, *Kirchenrecht und Reform in Frankreich: die Collectio Vetus Gallica, die älteste systematische Kanonessammlung des Frankischen Gallien* (Berlin 1975).

[39] See Rosamund McKitterick, 'Knowledge of canon law in the Frankish kingdoms before 789: the manuscript evidence', JTS, 36 (1985), 97–117; Yitzhak Hen, 'Knowledge of canon law among rural priests: the evidence of two Carolingian manuscripts from around 800', JTS, 50 (1999), 117–134.

[40] J. Gilchrist, 'Proprietary Churches', NCE, vol. 11, 874. See also A. Stickler, *Historia Iuris Canonici,* 118–119.

> It was simple but audacious. Since the secular authorities would not grant the reforms desired, these reforms should be represented as having been already granted long ago by earlier kings and laws. The laws which could not be passed now, should be forged and set forth as old laws newly discovered. These might be secular laws passed by kings or spiritual laws enacted by the Church; better still, they might be both.[41]

In this way a new series of canonical collections came to light in Gaul in the middle of the ninth century. This is the origin of the famous canonical collection that was known for centuries as the *Collectio Isidori Mercatoris* : the Collection of Isidore the Merchant. Since the sixteenth century it has been known as the *Collectio Pseudo-Isidori*, or simply as the False Decretals, for reasons we shall discuss in a moment. How the collections came into existence is a fascinating story and constitutes one of the most daring and successful frauds in history: a work of genius. Ancient laws would be forged to meet the needs of the Church in ninth-century Gaul. The person or persons responsible decided that two types of law would be required for the effective reform of the Church: secular laws which, it was hoped, would be recognized as binding by the civil authorities, and conciliar canons and papal decretals which, purporting, as they did, to come from venerable and ancient church authorities, would be accepted as binding by all the faithful. The alleged antiquity of the law would be regarded as a criterion of its authenticity. The 'compilers' – or perhaps one should say, the fabricators – of these collections would have been outraged if they had been accused of trying to deceive. They were out to reform the Church and bring it back into its pristine state of fidelity to its origins, removing obvious abuses that had crept in against all sound Christian tradition.[42] What was required was a body of ancient church law that would strengthen the power of the bishops in their dioceses, and one way of doing this would be to reinforce the universal authority of the bishop of Rome. So a number of important matters would be termed *causae maiores*, and, as such, reserved by the canon law to the pope. The reformers wanted to be able to appeal, therefore, *ad iura antiqua Romanorum Pontificum et Imperatorum* – to the ancient rights of the Roman Pontiffs and the Emperors.

Such in outline are the circumstances that led to the production of what are now referred to as the Pseudo-Isidorian Forgeries. In fact, four distinct collections of laws were fabricated. The first production of the forgers seems to have been a revised version of the chronological *Hispana* and is generally known as the *Hispana Gallica Augustodunensis*. The name comes from the Latin name of the city of Autun, the place where the only complete extant manuscript was

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[41] R. C. Mortimer, *Western Canon Law* (London 1953), 34.

[42] In the Middle Ages and earlier there was, of course, a quite different attitude towards forgery and plagiarism than there is today. All texts were treated with greater freedom than would now be tolerated. One thinks of the speeches in Thucydides and Tacitus, for example. However, it has to be admitted that the Pseudo-Isidorian compilers brought forgery to a fine art.

found.[43] The *Hispana Gallica Augustodunensis* corrects many passages in the *Hispana Gallica.* The revision is based in part on genuine sources (the *Dionysiana-Hadriana* and some Irish collections of canons), but there are also typically Pseudo-Isidorian additions.[44] The *Hispana Gallica Augustodunensis* is today generally accepted as the work of the forgers who later produced the False Decretals.[45]

The period from 845 to 847 is thought to have been the date of composition, 847 being the more probable of the two, although the possibility cannot be excluded of a stratified composition extending beyond even 847.[46] Fuhrmann thinks it probable that this collection of decretals was the earliest product of the workshop, and that it was then used to form part of the much larger Pseudo-Isidorian Decretals. It was a sort of 'ballon d'essai' by the forgers to prepare the public for their more ambitious work that was already in hand.[47]

The second collection, the *Capitula Angilramni* (the Ordinances of Angilramn), contains 71 maxims of law, modified in accordance with the aims of the forgers, almost all of which deal with the prosecution of clerics and especially of bishops. These claim to have been given by Pope Hadrian I (772–795) to Bishop Angilram of Metz (768–791), who had been a chaplain to Charlemagne. The forger drew heavily upon Roman Law, and used the *Dionysio-Hadriana* extensively. This collection contains regulations on the competent forum for trials and is, in fact, a short code of procedural law.[48]

The third collection is known as the *Capitularies of Benedict the Levite.* It consists of three books and four 'additions', and it purports to be a supplement to an earlier collection of capitularies or civil ordinances. The author, who calls himself Benedict the Levite, claims to have initiated the collection at the order of Archbishop Otgar of Mainz (826–847) and to have found his material mainly in the archives of Mainz Cathedral. He alleges that this material had come from capitularies of Pepin, Charlemagne and Louis the Pious, and had been brought to Mainz by Archbishop Riculphus (d. 813). However, Fuhrmann thinks that its origin must be traced to the West Frankish Kingdom and the opponents of

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[43] This manuscript is now in the Vatican Library, *Cod. Vat. Lat 1341* (10th century).

[44] There is as yet no edition of the *Hispana Gallica Augustodunensis,* as such, but one can get much information about it from the critical apparatus of the above-mentioned edition by G. Martínez Díez, *La colección canónica Hispana.*

[45] See D. Jasper and H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington 2001), 144–149.

[46] Horst Fuhrmann, 'False Decretals', NCE, vol. 5, 821. Fuhrmann has also published a three-volume study of the False Decretals: *Einfluss und Verbreitung der pseudoisidorischen Fälschungen von ihren Auftauchen bis in die neuere Zeit,* 3 vols (Stuttgart 1973–1974).

[47] See G. Fransen, 'Isidoriens (Faux)', in *Dictionnaire d'Histoire et de Géographie Ecclésiastiques,* vol. 26 (Paris 1997), 222.

[48] Edition in Paul Hinschius, *Decretales Pseudoisidorianae et Capitula Angilramni* (Leipzig 1863), 757–769.

Archbishop Hincmar of Rheims (806–882).[49] The laws are in the form of civil decrees from the Frankish royal chancery. They deal with the whole of ecclesiastical discipline and not simply with what was foremost in the minds of the reformers – otherwise they might have aroused suspicion about their origin. It is clear, however, that the main aim of this collection of decrees was the defence of the clergy against secular authorities. To indicate the harmony been church law and civil law, the decrees are drawn from ecclesiastical decrees and imperial edicts. Some of the texts are genuine documents with interpolations. Others are completely apocryphal. There are many examples in which the original has been altered to suit the requirements of the reformers. For example, *Sedes Constantinopolitana* becomes *Sedes Apostolica*; *jura metropolitarum* becomes *iura episcoporum* and so on.

The largest and most famous of these spurious collections was the collection known as the Pseudo-Isidorian Decretals or, more commonly, the False Decretals.[50] This contains papal decretals and conciliar canons from the time of Clement I, at the end of the first century, to that of Gregory II (716–731). The author claims to be a certain Isidore, a pseudonym probably used to suggest the famous seventh-century Spanish canonist, St Isidore, bishop of Seville (600–36).[51] More than one hundred medieval manuscripts of this collection are known today, so it had a wide circulation. It is divided into three parts. The first part begins, as did the *Dionysiana*, with the fifty *Canones Apostolorum*. It then contains sixty decretal letters, purporting to have been written by pre-Nicene popes from Clement I to Melchiades (311–313). All of these – except for the first two – are now known to be apocryphal, – made up by the compiler. The second part begins with a few introductory documents, among which is the 'proof' for the temporal power of the popes, the *Edictum Domini Constantini*

[49] H. Fuhrmann, NCE, vol. 5, 822. Hincmar was a strong defender of his rights as the metropolitan archbishop and these rights were seriously undermined by the False Decretals.

[50] In 1863 Paul Hinschius published what was thought at the time to be a critical edition of the False Decretals. It has been shown, however, that Hinschius believed that Part II of the False Decretals was an adaptation and enlargement of the Spanish collection known as the *Hispana*. He was nearly right in this, but in fact it was not the pure *Hispana*. It was the *Hispna* as this had been copied and circulated in Gaul. So Hinschius made the mistake of printing the conciliar canons from a nineteenth-century edition of the pure *Hispana*. As a result, Hinschius' edition of the conciliar canons was not that of the False Decretals, and Jacques Merlin's uncritical edition of 1524 is truer to the tradition of the False Decretals. This has been reproduced in PL, vol. 130. See D. Jasper and H. Fuhrmann, op. cit., 154–159. Also H. Fuhrmann, 'Reflexion on the principles of editing texts', *Bulletin of Medieval Canon Law*, 11 (1981), 1–6. Fuhrman discusses the decretals that are the invention of the forgers in *Einfluss und Verbreitung*, vol. I, 167–191. See also Joachim Richter, 'Stufen pseudoisidorischer Verfälschungen. Untersuchungen zum Konzilsteil der pseudoisidorischen Decretalen'. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kan. Abt.* 64 (1978), 1–72.

[51] As has already been remarked, the name of St Isidore is often associated with the seventh-century Spanish canonical collection, the *Hispana*. It is now generally agreed that the *Hispana* was not the work of St Isidore, but the result of joint activity by the Spanish bishops.

Imperatoris, the famous Donation of Constantine.[52] This is also now known to be a complete forgery, but it was fabricated probably in the mid-eighth century and in Rome, a century earlier than the False Decretals.[53] There follows a collection of conciliar canons from the First Council of Nicaea (325) to the Second Council of Seville (619). Most of these are genuine canons, taken from the first part of *Hispana Gallica Augustodunensis*, though even here there are serious alterations.[54] The third part is a second collection of decretal letters and conciliar canons from the time of Pope Sylvester I (314–335) to Pope Gregory II (715–731), including a long series of ninety-seven decretals of Pope Leo the Great. These follow the order of the second part of the *Hispana Gallica Augustodunensis,* but to the authentic decretals are added thirty false decretals made up by the forger. There are also many forged interpolations in the otherwise authentic decretals. The forger pursued his aim of reforming the Church and eradicating serious abuses by collecting ancient canons and decretals and 'editing' them to suit his needs (either by interpolations or by alterations to the original wording). When suitable ancient decretals were not available he simply made these up to suit his requirements. It is, however, fascinating to see how he went about this work. In the collection there are almost one hundred forged papal decretals, but these false decretals are not composed of entirely new material. On the contrary, they are mosaics made up out of words and phrases taken from genuinely ancient texts. It is a fabricated collection, put together in mosaic form out of various, often drastically edited, excerpts (about 10,000).[55] 'The decretals are formed – it must have been an immense labour involving a broad and profound knowledge of the history of papal decretals – of a mosaic of sentences and phrases taken from authentic Roman documents and strung together in such a way as to give the required sense'.[56]

But the forger did not simply fabricate decretals at random. He followed carefully the chronological order of the popes that was provided in the *Liber*

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[52] *Edictum Domini Constantini Imperatoris*: PL vol. 130, cols 245–252. An edition has been published by H. Fuhrmann in *Monumenta Germaniae Historica. Fontes iuris Germanici antiqui,* X (1968), 278–280.

[53] The Donation of Constantine purports to be a constitutional grant by Constantine the Great to Pope St Sylvester I in which the emperor, in thanksgiving for his baptism and his cure, handed over to the bishop of Rome, imperial power, the Lateran Palace and rulership over Rome, Italy and the West. Constantine then left for Constantinople. It is probably an eighth-century forgery; it was quoted frequently by popes from the time of Pope Hadrian in the eighth century. Pope Leo IX in 1053 made official use of it and it was included in the second recension of Gratian's *Decretum* (D.96, c.14). It is an interesting expression of the political doctrine of the bishops of Rome at that time. It would be used later by Balsamon, in twelfth-century Constantinople, to support the claims of Constantinople. It was proved to be a forgery in the fifteenth century by Nicolas Cusa and Lorenzo Valla. See S. W. Ullmann, 'Donation of Constantine', NCE, vol. 4, 1000–1001.

[54] PL, vol. 130, cols 243–610.

[55] See H. Fuhrmann, NCE, vol. 5, 822.

[56] R. C. Mortimer, *Western Canon Law*, 35.

Pontificalis.[57] When he noted that such and such a pope was reported to have issued a certain decree and this decretal letter had not come down to us, then he made one up to suit his purposes and attributed it to that particular pope. In this way he provided the authenticity of his 'decretals' with a further persuasive confirmation from the *Liber Pontificalis*, which was highly respected as a reliable historical record of the lives of the popes. He also included some spurious texts concerning theological matters – to strengthen the impression that the letters were genuine – but he was crafty enough in these to keep well clear of all contemporary controversies in theology. In short, the whole thing was an ingenious masterpiece of deception. It took something of a genius to mastermind such a project.

> The Pseudo-Isidorian Forgeries show evidences, both in tendency and in composition, of a common literary origin, no matter how divergent they may be in their use of sources and in the treatment of specific points. The scope of the sources, the interconnections, and the basic attitudes are so uniform that there can be no doubt that the whole group of writings came from the same sort of mind.[58]

It is now generally agreed that the Pseudo-Isidorian Decretals originated in Gaul about the middle of the ninth century (between 847 and 852), but there is not the same agreement about their precise place of origin. Most recent authors think that Rheims is more probably the source. The description of the province fits the Rheims situation where there was strong opposition to the claims of the metropolitan, Archbishop Hincmar (806–882).[59] It is not known who the forger was, though it is likely that we are dealing not with a single author, but with a group of people who worked together under the direction of a leader. There does seem to be the guidance of a single mind behind the whole enterprise – of

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[57] The *Liber Pontificalis* is a collection of early papal biographies going right back to St Peter. The account of each pope is given briefly according to a formula and with chronological data concerning the principal events and decrees of his pontificate. The biographies of the earlier popes are short, but from the fourth century onwards they increase in size. 'The work was issued in a series of editions, which were brought up to date by the addition of later Lives. The earliest form of it, which was dependent on the Liberian Catalogue (354) [an early list of popes down to Pope Liberius (352–366)], appears to have been the work of a Roman presbyter at the time of Boniface II (530–532). Subsequent redactions carry the history down to the death of Martin V (1431), and even later'. ODCC, 977. For an English translation, R. Davis, *The Book of Pontiffs* (Liverpool 1989); *The Lives of Eighth-Century Popes (715–817)* (Liverpool 1992); *The Lives of Ninth-Century Popes (817–891)* (Liverpool 1995).

[58] H. Fuhrmann, in NCE, vol. 5, 821.

[59] 'They were the product of a highly organized, skilled and clever atelier working in the archdiocese of Rheims, probably in the employ of Hincmar, bishop of Laon, who was locked in a bitter feud with his uncle, Hincmar, archbishop of Rheims'. R. E. Reynolds, 'The organisation, law and liturgy of the western church, 700–900', in *The New Cambridge Medieval History*, vol. II, edited by R. McKitterick (Cambridge 1995), 616.

a person who was an expert canonist and with an amazing mastery of the history of canon law and its sources. So all four of the compilations tend to be grouped together and referred to jointly as The False Decretals. We shall probably never know for certain who the forger was.

The Discovery of the Fraud

In the course of time suspicions had arisen here and there concerning parts of the Isidorian Decretals, and even from the start the spuriousness of certain parts were admitted by canonists like Bernold of Constance and others. From the fifteenth century onwards serious doubts about the authenticity led to new investigations, though the suspicions about the forgery did not prevent their being used. Erasmus and Robert Bellarmine did not accept them as genuine. The Centuriators of Magdeburg, in their Lutheran anti-Roman history of the Church – *Historia Ecclesiae Christi* – published at Basel (1559–1574), had attempted to prove that all the early papal decretals in the collection up to the end of the fourth century were forgeries.[60] In 1572 a Spanish Jesuit, Francisco Torres, published a treatise denying the contention of the Centuriators and defending the authenticity of the Isidorian Decretals.[61] About fifty years later, a counter-attack was published by a Protestant church historian, David Blondel (1590–1655). In 1628 he published the results of his findings in a book entitled: *Pseudo-Isidorus et Turrianus Vapulantes*.[62] The purpose of Blondel's book was polemical and partisan but, by his careful analysis of the sources and the display

[60] The 'Centuriators' were a group of Lutheran clergy and others at Magdeburg who, sponsored by the government of the city, between 1559 and 1574, published a history of the Church from its beginnings down to the year 1400, the *Historia Ecclesiae Christi.* They wrote their history century by century, (hence the name '*Centuriatores*'), and attempted to show how the Roman Catholic Church under the direction of the papacy had distorted the true Church of Christ, whereas the Reformation was being faithful to the original sources. A leading force behind the project and the person who coordinated the work was the famous Lutheran theologian Matthias Flacius Illyricus (1520–1575). 'In its breadth of conception the work was a landmark in ecclesiastical history; but its inaccuracies, and especially the liberties it took with the texts of original documents, made it an easy target for C. Baronius in his *Annales Ecclesiastici'*. ODCC, 313. For a summary of the enterprise, see J.-F. Gilmont, 'Flacius Illyricus', DHGE, vol.17, 311–316. Cardinal Cesare Baronius (1538–1607) published his *Annales,* in which he stressed the importance of consulting original documents, as a Roman Catholic reply to the work of the Centuriators.

[61] Francisci Turriani, *Adversus Magdeburgenses Centuriatores pro Canonibus Apostolorum et Epistolis Decretalibus Pontificum Apostolicorum. Libri Quinque* (Florence 1572). Torres was a Spanish priest working in Rome who had done some work on Greek manuscripts. He had been sent by Pope Pius IV as a papal theologian to the third session of the Council of Trent. He entered the Society of Jesus in 1567. His attempt to defend the False Decretals was uncritical and left itself open to Blondel's refutation.

[62] Published in Geneva 1628. The title can be rendered: 'Pseudo-Isidore and Torres Under the Lash'.

of his vast humanistic learning, he effectively destroyed for most people the belief in the authenticity of the Isidorian collections. Critical historians were convinced by Blondel. From then on the collections became known as the Pseudo-Isidorian Decretals, or simply as the False Decretals.[63]

A few examples here must suffice to indicate the sort of argument Blondel used to demonstrate the spuriousness of the collections. A collection of conciliar canons is attributed to St Isidore of Seville containing canons from eight Councils of Toledo that were, in fact, held only after the death of Isidore (636). There are many quotations from the Bible, attributed to popes of the first three centuries, but these are given according to the Latin version of St Jerome, produced between 384 and 400, and according to the edition supervised by Alcuin towards the end of the eighth century. Consular dates are given that are inaccurate. Words and expressions are used anachronistically or in a way foreign to the usage of the first three centuries, and so on.

There are a number of reasons why it took so long to detect the fraud. First of all, the Middle Ages did not possess our modern critical sense. There were many *pseudepigrapha* produced in antiquity and in the Middle Ages. Part of the reason for this was an ideal conception of truth: this is how things ought to have been.[64] Secondly, the fraud was carried out with consummate skill and backed up with a formidable mastery of the history of canonical sources.

The Aims of the Forgers

The main objectives of the forgers can be summed up as follows:

1 To free church property from usurpation by the secular rulers and to return it to the religious purposes for which it had been intended by the benefactors. Violations of these laws were condemned as sacrilege.
2 To protect diocesan bishops and clergy from arbitrary and unjust accusations. Therefore it was laid down in the newly forged law that bishops (and other members of the clergy) could not be deposed unless by a canonical process.
3 Clerics were forbidden to take part in business and other occupations that were judged incompatible with the clerical state. In particular, clerics were forbidden to go on military service. The False Decretals include a number

[63] Blondel's book is divided into two parts: Part I: *Prolegomena* of 119 pages crammed with polemics and information on the origin and use of the Decretals. Part II (680 pages) contains the text of the Decretals, with the margins annotated and, following each piece, a rebuttal of specific statements made by his adversary. It is not known what manuscript of the Isidorian Decretals Blondel used.

[64] Führmann discusses this whole problem at length in *Einfluss und Verbreitung*, vol. 1, 64–136.

of authentic canons enjoining celibacy for priests and deacons, laying down severe penalties for those who do not practice sexual continence.

In particular the False Decretals stress the supreme authority of the bishop of Rome and papal authority is frequently referred to. Many decisions are classified as *causae maiores*, reserved to Rome; councils, whether national or provincial, were under the authority of Rome; appeals were permitted to the bishop of Rome in many instances.[65] One of the principal objectives of the forgers appears to have been the protection of the authority of the diocesan bishops in Gaul, but the stress put on papal primacy in pursuit of this did much to enhance the power and prestige of papal authority throughout the Western Church.

5 The authority of the local bishop was stressed. On the one hand, he was protected from the metropolitan who was proposed as *primus inter pares* – first among equals – in the province, and all common matters had to be dealt within the provincial synod. On the other hand, obedience to the bishop was urged; he alone is the chief pastor in his diocese and so all kinds of 'exemption' from episcopal authority are rejected in the False Decretals.

6 All the obligations of the Christian life are commended. The legislation on the indissolubility of marriage is clear and a number of matrimonial impediments are listed, especially those arising from consanguinity.

Such, in outline, were the aims of the new collection of False Decretals. They are put forward in the preface and are clearly to be seen in the False Decretals themselves.[66] It is not enough to consider the Pseudo-Isidorian forgeries simply from the point of view of ecclesiastical politics and jurisprudence: they are more than simply fabricated canonical legislation. They contain many regulations on the liturgy, the doctrine of the sacraments, and the apostolic life. Judging by the relative amount of attention given to a number of questions, the conclusion could be drawn that the principal aim of the forgeries was to protect the suffragan bishops from being dictated to by the metropolitans, provincial synods and the secular power. The forgeries greatly complicated the procedural rules and the possibility of the deposition of bishops. To strengthen the position of the bishops, the metropolitans are to make decisions only in collaboration with their comprovincial bishops and are jurisdictionally constricted by a newly invented office, that of the primate. Accusations against bishops are removed from the jurisdiction of provincial and national synods by being declared *causae maiores,* reserved to the pope, to whom alone belongs likewise the right to

[65] See H. Fuhrmann, *Einfluss und Verbreitung,* vol. 1, 223–224.

[66] See PL, vol. 130, cols 7–12.

ratify the councils. Papal rights are stressed to the extent to which they favour the independence of the suffragan bishops.'[67]

There is little evidence that the forgeries had much practical effect in helping the bishops in the Frankish kingdoms in the ninth century; nor were they ever taken over officially by the Church in the West. However, I have chosen to discuss them here because they show in very clear terms the direction in which Western canon law was moving in the ninth century. Their influence on all subsequent canonical collections in the Western Church was substantial. The manuscript evidence alone shows that these forged documents were very widely used throughout the Middle Ages and continued to be used as genuine authorities right up to the sixteenth century.[68] References to them are found in the letters of a number of late ninth-century popes: Nicholas I, Hadrian II, John VIII, Stephen V and John IX.[69] A number of the Reform popes of the eleventh century made use of the False Decretals, though the more extensive use of them only began with Pope Urban II (1088–1099). However, as Fuhrmann has shown, the chief channel of influence was not the papacy directly but rather the collections of canons in which these decretals were incorporated. Spurious canons from the False Decretals found their way into almost all subsequent canonical collections of the Latin Church and in this way had a great influence on the development of the canon law in the Western Church.[70] As we shall see, more than 300 of these spurious 'canons' were included by Gratian in his *Concordia Discordantium Canonum,* which ensured that they continued to be treated as

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[67] H. Fuhrmann, NCE, vol. 5, 821. Also H. Fuhrmann, *Einfluss und Verbreitung* vol. 1, 137–50. Kathleen G. Cushing, *Papacy and Law in the Gregorian Revolution. The Canonistic Work of Anselm of Lucca* (Oxford 1998), 74.

[68] Schafer Williams listed eighty codices containing the whole work of which ten are from the 9th century. He also lists forty-seven *excerpta* which were made from the False Decretals. See S.William, *'Codices Pseudo-Isidoriani'*. H. Mordek noted five further manuscripts, *'Codices Pseudo-Isidoriani*: *Addenda* zu dem gleichnamigen Buch von Schafer Williams', *Archiv für Katholisches Kirchenrecht,* 147 (1978), 471–478. L. Kéry lists 108 medieval manuscripts of the Pseudo-Isidorian Decretals that still survive, which shows that it was probably the most frequently copied collection of the century. See L. Kéry, *Canonical Collections of the Early Middle Ages* (Washington 2000), 100–105. The influence of this collection on the development of western canon law can hardly be exaggerated. See James A. Brundage, *Medieval Canon Law* (London and New York 1995), 26–27.

[69] H. Fuhrmann, NCE, vol. 5, 823.

[70] The following list shows how many of the forged decretals were included in later canonical collections in the West: *Collectio Anselmo Dedicata* (c.890): of 1,980 canons 507 forged decretals; Burchard of Worms, *Decretum* (before 1025): of 1,785 canons 141 forged decretals. *Diversorum Patrum Sententiae* (1074–1076): of 315 canons 148 forged decretals (on the Roman primacy); *Collectio canonum* of Anselm of Lucca (1083–1086): of c.1150 canons, 263 are taken from Pseudo-Isidorian decretals.

genuinely binding laws in the West throughout the whole of the Middle Ages.[71] The influence of the False Decretals will be discussed in greater detail later in this chapter.

The Two Collections Compared

The *Nomokanon in XIV Titles* is accepted as authoritative by the Orthodox Churches. It is included in their law collections and the great Byzantine commentators wrote their commentaries on it and the canons in the chronological part remain the *ius vigens* in the Orthodox Churches to this day. I shall now compare this with the ninth-century False Decretals which I have taken as embodying the tendencies of canon law in the Western Church.[72] The False Decretals can be seen as a direct and logical development of the *Dionysiana.* They added to that collection a number of canons from regional councils in the West and a large number of 'new' papal decretals – most of them forgeries. In the *Nomokanon in XIV Titles*, we see in Constantinople a similar direct and logical development of the *Synagoge in 50 Titles*. The number of conciliar canons has increased considerably. The number of imperial constitutions has also greatly increased; and recourse to the 'canons' of the Eastern Fathers has been taken forward a long way. John Scholastikos had sixty-eight 'canons' from two letters of St Basil the Great. Now there were 234 'canons' from twelve Fathers of the Eastern Churches – six patriarchs of Alexandria, two patriarchs of Constantinople, and four other Eastern bishops. There is one 'canon' from St Cyprian from an African council.

The *Nomokanon* now included the 102 canons from the Council *in Trullo* (691/2). The Trullan canons are not to be found in the Isidorian Decretals. The False Decretals do include a very large number of canons from regional councils held in Spain and Gaul. The Western collection contained no 'canons' from the patriarchs and Fathers of the Eastern Churches, and the Eastern *Nomokanon* had no decretals promulgated by the Bishop of Rome. How significant is this? One could claim that since Greek was spoken at Constantinople and Latin was the language of the Western Church, the two Churches, although in full communion with each other, did not speak the same language. This is true and is a factor that influenced greatly relations between East and West. It should not be underestimated, but it is not the whole story. There is a more important factor.

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[71] *Concordia Discordantium Canonum* (1141): of the 3,800 or so canons there are more than 300 from the forged decretals: 230 canons on procedure; 50 canons about bishops; 50 canons on the Roman Pontiff.

[72] See E. Herman, 'Ius Iustinianeum qua ratione conservatum sit in iure ecclesiastico orientali', *Acta Congressus Iuridici Internationalis*, vol. II (Rome 1935), 145–156.

What can be seen emerging much more clearly than before are two quite different views concerning church government and discipline.

Church Government and Administration

This divergence can be seen in the very names under which these compilations have come down to us: *Nomo-kanon* (implying imperial laws and conciliar canons) and Isidorian Decretals (where the important element consists in papal decretal letters). In the West papal decretal legislation reflects a vision of the Church which is in sharp contrast to that of the *Nomokanon*. There can be no doubt that the False Decretals had an important influence on the development of the canon law of the Latin Church and introduced important innovations into church administration. This is particularly true with regard to the exercise of papal primacy. But such influence should not be exaggerated. The primacy of the bishop of Rome, as successor of St Peter, was accepted in the East and in the West long before the appearance of the False Decretals and cannot be said to be an invention of the ninth-century forgers.[73] This is undoubtedly true, but it has to be acknowledged that the False Decretals did much to ensure that the primacy of the Bishop of Rome came to be exercised more frequently and more extensively. They were very influential too on the way in which the Roman primacy was exercised. The authority of the Roman Pontiff was appealed to increasingly by local churches and there was a notable increase in the number of matters reserved by law to the pope. The emphasis in the West was and, from this point onward, would be increasingly placed on direct decretal legislation by the Roman Pontiff rather than on decisions made by bishops in council. In fact, the law of the Latin Church would be referred to simply as the *ius decretalium* – decretal law. So a particular view of church structures and discipline was confirmed by these forged documents.

The False Decretals presuppose a centralized monarchical government, with the Bishop of Rome as the central point of reference for all matters of importance. As far as possible, secular rulers are excluded from church government and administration, since one of the principal aims of the forgeries was to free the local bishops from secular domination. The spurious Donation of Constantine, which was included in the introduction to the second part of the False Decretals, though not a ninth-century forgery, also encouraged the papacy to get

[73] In fact, a primacy of jurisdiction was claimed by Leo I, Gelasius I, Vigilius and others, and the Byzantines recognized this when it suited them, as, for example, in the appeal by the supporters of Patriarch Ignatius against the appointment of Photios as Patriarch in 861, and, towards the end of the ninth century, by the Emperor Leo VI concerning his fourth marriage. Pope Sergius III recognized the validity of the marriage, going against the decision of the patriarch of Constantinople, who was forthwith deposed by the emperor. See J. M. Hussey, *The Orthodox Church in the Byzantine Empire*, 105.

more and more directly involved in temporal administration in Italy.[74] There is strong evidence that this forgery was widely copied and used by the papacy from the eighth century onwards as a papal title-deed, among other things, to refute Greek imperial pretensions in the West.[75]

As we have seen, the important role assigned to the bishop of Rome in the False Decretals was primarily intended by the forgers to provide protection for the local bishop in his diocese. It is ironic that this most effective juridical instrument for the increasingly centralized activity of the pope did not have its origins in Rome but in the kingdom of the Franks. A clear example of how the Pseudo-Isidorian Decretals could be used to bolster papal power can be seen in Anselm of Lucca's *Collectio canonum*, compiled for Pope Gregory VII around 1083. This was an important instrument in promoting the Gregorian Reform and enjoyed wide popularity. It was also 'a main source through which the False Decretals were popularized in Italy and beyond'.[76] The appeals to Rome, laid down in the False Decretals, were meant to provide a guarantee for the local bishop. Anselm of Lucca, however, approached the Pseudo-Isidorian Decretals from the Roman point of view and made them clear statements of the supremacy of the bishop of Rome. 'He set about transforming the expression of episcopal guarantees into universal and all-encompassing stipulations of apostolic powers'.[77] By doing so he helped to provide that authoritative basis the Gregorian Reformers wanted to support an increasingly centralized exercise of papal

[74] According to this forgery, Constantine is alleged to have decreed, out of reverence for blessed Peter, that Pope Sylvester 'should have primacy over the four principal Sees of Antioch, Alexandria, Constantinople and Jerusalem, as well as over all the churches of God throughout the whole world; and the pontiff who occupies at any given moment the see of that same holy Roman Church shall rank as the highest and chief among all the priests of the whole world and by his decision all things are to be arranged concerning the worship of God or the security of the faith of Christians'. The forgery continues: 'To correspond to our own empire and so that the supreme pontifical authority may not be dishonored, but may rather be adorned with glorious power greater than the dignity of any earthly empire, behold, we give to the often-mentioned most holy pontiff, our father Sylvester, the universal pope, not only the above-mentioned palace [the Lateran palace in Rome], but also the city of Rome and all the provinces, district and cities of Italy and the Western regions, relinquishing them to the authority of himself and his successors as pontiffs by this our imperial grant'. The emperor goes on to say that since he is going to transfer his throne to Constantinople, it is only right that no earthly emperor should rule over the place where the head of the Christian religion had been set up by the 'celestial emperor'. He adds that anyone who does not accept this decree 'shall perish with the devil and all the wicked by burning in the lowest hell'. See PL, 130, 250–252. The English translation is from C. J. Barry (editor), *Readings in Church History* (Collegeville 1985), 239.

[75] See Walter Ullmann's review of Y. Congar, *L'Ecclésiologie du haut Moyen Age* (Paris 1968), JTS, 21 (1970), 224–225.

[76] See J. Gilchrist, NCE, vol. 1, 55.

[77] K. G. Cushing, *Papacy and Law*, 75.

authority throughout the Latin Church.[78] Moreover, a number of important innovations were brought in by the False Decretals. For example, in contrast to the tradition sanctioned by the canons of early general councils, permission from Rome was required in order that a synod of bishops be celebrated anywhere. In several forged letters to the Eastern bishops, attributed to Pope St Julius I (337–352), it was laid down that provincial councils could not be convoked without the authority of the Apostolic See.[79] A definitive sentence against a bishop could only be passed by the Roman Pontiff and not by the metropolitan or the provincial synod.[80] The authority of the metropolitan was greatly diminished. In fact, forged papal letters from the False Decretals played an important part in reducing all effective synodal structures within the Latin Church of the West, at both regional and metropolitan levels. One effect of much of this forged legislation, through the multiplication of appeals to Rome, was to encourage the steady development of a more centralized government by Rome. This departure from the traditions of earlier centuries was done in the interests of reform. It would be taken even further by the Gregorian Reformers in the eleventh century.[81] A clear distinction should be made at this point between theory and practice. In fact, in the late ninth century and in the tenth, the Roman papacy was in a pitiable state and completely under the control of the political rulers. I am discussing the theory that was embodied in legal collections, but what happened in practice could often be quite different. The point I want to stress is that the legal collections provided the juridical basis for developments

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[78] For a well-documented discussion of this point, see K. G. Cushing, *Papacy and Law*, 72–78; and 210–212, where the author provides tables showing the 'Dispersion and Disposition of Pseudo-Isidorian Texts in the *Collectio canonum*'. According to this, Anselm had taken over thirty-three Pseudo-Isidorian texts that dealt with the power and authority of the Apostolic see of Rome.

[79] In a forged letter to Eastern bishops at Antioch, Pope Julius is said to have written that, 'without the authority of this Holy See, no one ought to celebrate councils, or call bishops to a synod or condemn them, all of which you have not been afraid to violate'. 'ut absque ejus sanctae Sedis auctoritate nullus deberet , aut concilia celebrare, aut episcopos ad synodum convocare, vel damnare, quae omnia vos temerare non timuistis'. PL, vol. 130, col. 627. This was taken over by Gratian in C.3, q.6, canon 9. Gratian has his own comment on this: while in fact it is true that many bishops were condemned and replaced without any consultation of the Roman See, Gratian states that this was tolerated 'pro bono pacis' (C.3, q.6, d.p.c.9). It is ironic that such forged letters should be attributed to Pope Julius I, because in fact he was the author of diplomatic letters to Eastern bishops concerning St Athanasius. (See St Athanasius, *Apologia contra Arianos*, PG, vol. 25, cols 282–291).

[80] See the Letter of Pope Damasus I to St Jerome and Archbishop Stephen and three African Councils in which he states that it is manifest to everyone from the witness of innumerable decrees that a bishop should not be condemned without the decision of the Prince of the Apostles. PL, vol. 130, col. 665.

[81] For a brief account of the development of a centralized, monarchic ecclesiology in the Latin Church, see E. Ménard, *L'Écclésiologie Hier et Aujourd'hui* (Paris 1966). Also Yves Congar, *Power and Poverty in the Church* (London 1964); C. Gallagher, 'Canon Law and Ecclesiology I', *The Way*, January (1982), 50–60.

that would take place later, when the time was ripe and the opportunities existed.[82]

In ninth-century Constantinople, on the other hand, the *Nomokanon* shows an emphasis on a more synodal/collegial form of government by the patriarch and the bishops, while the emperor is recognized as having an important role in the life and administration of the Church. Within this one body there was a double authority, that of the ordained episcopal authority and that of the lay imperial authority. This double authority came from God and in its exercise there was a division of labour. The religious understanding of the emperor's role that had grown up in pagan imperial Rome did not entirely disappear with the conversion of Constantine. The emperor continued to be regarded as the divinely appointed protector of the Church and the imperial power was expected to provide the Church with freedom and protection. The sacred character of the emperor was brought out in the ceremonies of the imperial court and the old Roman vocabulary in addressing him was preserved from pre-Constantine days. All this is eloquently expressed in the oration delivered by Eusebius, Bishop of Caesarea (c.260–340), in 336, on the thirtieth anniversary of Constantine's becoming emperor. The bishop sees in the emperor the divinely appointed agent who was destined to see the triumph of Christianity: 'like the radiant sun he illuminates the most distant subjects of his empire through the presence of the Caesars, as with the far-piercing rays of his own brightness'.[83] He is the messenger of God and God's instrument on earth.[84] This was, of

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[82] As Eamon Duffy observes, 'Deprived of the support of the empire, the papacy became the possession of the great Roman families, a ticket to local dominance for which men were prepared to rape, murder and steal. A third of the popes elected between 872 and 1012 died in suspicious circumstances – John VIII (872–882) bludgeoned to death by his own entourage, Stephen VI (896–897) strangled, Leo V (903) murdered by his successor Sergius III (904–911), John X (914–928) suffocated, Stephen VIII (939–942) horribly mutilated'. *Saints and Sinners. A History of the Popes* (Yale 1997), 82–83. One of the most distressing cases is that of Pope John XII (955–964). He was elected when he was only eighteen, at the insistence of his father, Alberic, and died at the age of twenty-seven, 'allegedly from a stroke while in bed with a married woman'. E. Duffy, op. cit., 83. Edward Gibbon comments on this short reign of John XII. After mentioning the charges of simony and licentious pursuits of gaming and hunting that were made against the young pope, Gibbon continues: 'But we read with some surprise that the worthy grandson of Marozia lived in public adultery with the matrons of Rome; that the Lateran palace was turned into a school for prostitution; and that his rapes of virgins and widows had deterred the female pilgrims from visiting the tomb of St Peter, lest, in the devout act, they should be violated by his successor'. E. Gibbon, *The History of the Decline and Fall of the Roman Empire* (London 1901), vol. 5, 298.

[83] 'The Oration in Praise of Constantine', in P. Schaff and H. Wace (editors) *Nicene and Post-Nicene Fathers of the Christian Church* (Edinburgh and Michigan 1991), 582.

[84] 'The qualities attributed to him [Constantine] by Eusebius are well known. They are not the outcome of a "Byzantinism" especially characteristic of Eusebius, but are representative of the attitude of the entire Church at the beginning of the fourth century, both in the East and in the West'. Kurt Aland, 'The Relation between Church and State in Early Times: A Reinterpretation'. JTS, vol. 19 (1968), 25.

course, the language of an official court panegyric, but it expressed a portrait of the ideal emperor which would have been taken for granted in his time. It was very influential in later patristic and Byzantine thinking.[85] How Justinian considered this imperial duty of supervision in church affairs is set out clearly in the preface to *Novella* 6, a constitution addressed in 535 to Epiphanius, 'Archbishop of this imperial city and Ecumenical Patriarch', in which the emperor lays down the regulations that should be followed concerning the ordination of bishops and other clergy. Justinian described the two great blessings they had received from God: priest and emperor, and these both came from the same divine source, the emperor to be the ultimate source of earthly law and the priest to look after spiritual matters.[86] The emperor clearly regards it as his duty to see that there are worthy bishops and clergy in the empire and he legislates accordingly.[87]

For his legislative and administrative acts, the emperor had complete freedom. There was no organ of state that had the constitutional right to control what the emperor could or could not do. He was the supreme legislator, above the law – *solutus legibus* – as we read in the Digest.[88] It is not easy to define the emperor's position in the church. Towards the end of the ninth century, probably in 880, Patriarch Photios had attempted to do so in the *Eisagoge* (Εἰσαγωγή),[89] where, in the two most important titles (Title 2 and Title 3) of this 'Introduction to the Law', the spheres of influence of the emperor and of

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[85] See J. Meyendorff, *Imperial Unity and Christian Divisions* (New York 1989), 30–33.

[86] Professor Haldon comments on this: 'As God represented the ultimate source of law, so the emperor chosen by God was the ultimate source of earthly law; a formulation which – by defining the priestly authority strictly in terms of ministering to "matters divine" – left some considerable scope for dissension thereafter'. John Haldon, *Byzantium. A History* (Gloucestershire 2000), 132.

[87] *Novella* 6, On the appointment of bishops and other clerics. Preface: 'Μέγιστα ἐν ἀνθρώποις ἐστὶ δῶρα θεοῦ παρὰ τῆς ἄνωθεν δεδομένα φιλανθρωπίας ἱερωσύνη τε καὶ βασιλεία, ἡ μὲν τοῖς θείοις ὑπηρετουμένη ἡ δὲ τῶν ἀνθρωπίνων ἐξάρχουσά τε καὶ ἐπιμελομένη, καὶ ἐκ μιᾶς τε καὶ τῆς αὐτῆς ἀρχῆς ἑκατέρα προϊοῦσα καὶ τὸν ἀνθρώπινον κατακοσμοῦσα βίον. ὥστε οὐδὲν οὕτως ἄν εἴη περισπούδαστον βασιλεῦσιν ὡς ἡ τῶν ἱερέων σεμνότης, εἴγε καὶ ὑπὲρ αὐτῶν ἐκείνων ἀεὶ τὸν θεὸν ἱκετεύσιν'. ('The greatest gifts of God to men, granted by providence from above, are the priesthood and the imperial power; the former has care of sacred things, the latter presides over and takes care of things human. Each proceeds from one and the same source and sets in order human life. Therefore nothing is so greatly desired by the emperors than the dignity of the priests, and they are always making supplication to God on their behalf'). *Novellae*, 35–36.

[88] J. B. Bury, *The Constitution of the Later Roman Empire* (London 1910), 9.

[89] 'The law book known up to now as the *Epanagoge* which recent research has shown was called the *Eisagoge* and in whose composition Photios played a part, contains two sections entitled "On the Emperor" and "On the Patriarch" which describe the spheres of influence and authority of these two powers'. Ruth Macrides. 'Nomos and Kanon on paper and in court', *Church and People in Byzantium*, edited by Rosemary Morris (Birmingham 1988), 62. For convincing arguments dating the *eisagoge* to around 880 and under the direction of Photios, see T. E. van Bochove, *To Date and Not to Date. On the Date of Byzantine Law Books* (Groningen 1996), 7–27.

the patriarch are clearly set forth. The emperor is to look after the physical well-being of the people while the patriarch looks after their spiritual welfare, which includes the interpretation of the canons. If it is true, Ruth Macrides argues, 'that the Byzantine state and church were neither separate nor separable institutions but manifestations of one and the same Christianity, it is also true for political and ideological reasons which had their origin in Constantinian times that the church was treated as a subordinate department of the state'.[90] The emperor was, of course, expected to follow the principles and forms of Roman Law, but he could modify these laws and make new ones when and as the need arose.[91]

The Holy Roman Emperor of Byzantium had a God-given task to perform within the Church. He was the anointed delegate of God – the ikon of Christ – and his sphere of authority included the ecclesiastical as well as the secular order. It was the emperor, for example, who convoked ecumenical councils and saw to the promulgation of their decrees. He appointed the patriarch of Constantinople from a 'terna' presented to him by the Permanent Synod.[92] Of course, he had to be a Christian and maintain and preserve Holy Scripture. He took an oath in which he confirmed the decrees of the ecumenical councils and the privileges of the Church. In general the emperor played a large part in ecclesiastical organization as is clear, for example, in the law books issued by Leo VI. Both form and content of the *Nomokanon* reflect a vision of the Church whose structure and discipline are based primarily on conciliar canons and traditions handed down by the great Fathers of the Eastern Churches, but they are also increasingly governed by direct imperial ecclesiastical legislation. It would be anachronistic to speak at this time in terms of Church-State relations, but in fact church authorities and civil authorities in Constantinople were closely linked together to form one harmonious whole: the laws and the canons stand side by side.[93] The metropolitans retained their traditional role in church administration. Synodal government of the Church was prescribed. Canon 8 of the Council *in Trullo* states that a synod of the bishops of a province should be held each year, continuing the tradition of regular provincial councils that was clearly expressed in the early councils.[94] This canon was expressly confirmed

[90] Ruth Macrides, op. cit., 61.

[91] See J. B. Bury, op. cit., 25ff.

[92] See E. Herman, *The Cambridge Medieval History*, vol. IV, part II (Cambridge 1967), Chapter XXIII, 'The Secular Church', 105–133. See also *Ecloga Basilicorum*, edited by L. Burgmann, *Forschungen zur Byzantinischen Rechtsgeschichte*, ed. Dieter Simon, 15 (Frankfurt am Main 1988), 140, 264, 353. The *Ecloga Basilicorum* was a legal commentary composed in 1142 on a selection of laws from the *Basilica* (from the first ten books). It should not be confused with the earlier *Ecloga*, a law book issued in Constantinople in 741 which provided, in eighteen titles, a concise compendium of the law.

[93] For a discussion of this point, see Ruth Macrides, op. cit., 61–85.

[94] 'In our desire to observe all the decrees of our holy Fathers, we renew the canon which declares that Synods of the bishops of each province are to be held each year, wherever the metropolitan should decide'. Council *in Trullo*, canon 8. This was confirming clear legislation from ear-

by canon 6 of the Second Council of Nicaea in 787. 'We also renew this canon, and should a ruler be found who prevents its observance, let him be excommunicated; ... when such a synod is held to discuss canonical and evangelical matters, the gathered bishops should pay particular care and attention to the divine and life-giving laws of God'.[95] In all this a much more collegial approach to church authority is evident than is seen in the ninth-century forged papal decretals.[96]

The Clergy: Married or Celibate

Both the *Dionysiana* in Rome and the *Synagoge in 50 Titles* in Constantinople presupposed that there would be married clergy. In neither of these sixth-century collections is there any law on clerical celibacy. Until the beginning of the fourth century there is no mention anywhere of celibacy or continence being imposed by law on deacons, priests or bishops in the East or in the West. Some

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lier councils: the First Council of Nicaea (325), canon 5; Chalcedon, canon 19 (included in Gratian, D.18, can.6), *Canones Apostolorum,* canon 37; Council of Antioch, canon 20 (This canon was included by Gratian in D.18, c.15, and attributed to a council held by Pope Martin. The Roman *Correctores* point out that this 'Pope Martin' was a bishop of Braga (Bracarensis) from whose collection of the Greek synods Gratian often quotes. The *Correctores* also note, 'For bishops in old times were usually called popes' (antiquitus enim episcopi papae dicebantur). Council of Carthage, canons 76, 95. We have already seen how episcopal synods were frequently held by the African Church in the fourth and the fifth century.

[95] DEC, vol. I, 144. These canons are not be found in the False Decretals since that compilation does not include the canons of the Second Council of Nicaea. Nor do they include the Trullan canons. See Gratian, *Concordia Discordantium canonum,* D.18, c.7.

[96] The first seven ecumenical councils – from Nicaea I (325) to Nicaea II (787) – were, and are still, accepted as authoritative by both Rome and Constantinople. See W. De Vries, *Orient et Occident. Les structures ecclésiales vues dans l'histoire des sept premiers conciles oecuméniques* (Paris 1974). De Vries made a study of these councils with a view to finding out how the structures of the Church were understood in these first eight centuries of Christianity. His research has shown that there were divergent views about the exercise of authority in the Church right from the time of the Council of Chalcedon in 451. The Eastern bishops stressed the collegial nature of church authority, while Pope Leo the Great stressed the monarchical. De Vries maintains, for example, that the bishops at the Council of Chalcedon did not simply accept as decisive the *Tomus Leonis,* on its own. Otherwise there would have been no need for a debate on it in the council (*Orient et Occident,* 141–145). De Vries has shown that the study of the first seven councils indicates that that the Greek East and the Latin West differed profoundly on the way of conceiving the Church as an institution. As Y. Congar points out in his foreword to De Vries's book, we already knew that there were divergent views in the East and in the West with regard to the exercise of the power of jurisdiction. De Vries has demonstrated this with precise historical documentation. He has encouraged us to re-read the history of these centuries with a more critical eye (*Orient et Occident,* 3). See also Y. Congar, *L'Ecclésiologie du haut Moyen Age* (Paris 1968), especially Section C: 'L'Orient. Accord et Divergences Ecclésiologiques avec Rome et l'Occident', 324–393. Here Congar illustrates how two canonical traditions resulted in two conceptions of the life of the Church.

recent writers have attempted to prove that a legal obligation of clerical continence goes back to Apostolic times.[97] Many find the arguments put forward to sustain this thesis unconvincing. What has been established is that there was an ideal rather than a law of clerical continence in the early Church, but it is now generally agreed that in those early centuries many of the clergy, including bishops, were married and this was considered to be a normal condition.[98] From the fourth century onwards, however, a number of regional councils passed laws concerning the marriage of the clergy which assumed that the clergy could not marry after ordination.[99] A Spanish provincial council held at Elvira, near Granada, at the beginning of the fourth century, in canon 33, required that the higher clergy who had been married before ordination must observe continence under pain of deposition. This is the earliest Western canonical document that

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[97] For example, C. Cochini, *The Apostolic Origins of Priestly Celibacy* (San Francisco 1990). The thesis of Cochini's book is that the *legal obligation* of continence for bishops and priests goes back to Apostolic times. Not everyone has found his arguments convincing. See, for example, the detailed review by Henri Crouzel, 'Une nouvelle étude sur les origines du célibat ecclésiastique', *Bulletin de Litterature Ecclésiastique* 83 (1982), 293–297. Some years later Roman Cholij, accepting the views of Cochini, attempted to prove the thesis that, despite the fact that for many centuries the early Church had sacred ministers who were married, from the Apostolic Age onwards they were *required by law* to abstain from conjugal relations after ordination. See Roman Cholij, *Clerical Celibacy in East and West* (Leominster 1988). This too has been found unconvincing by many. See the review by D. Callam, in JTS, vol. 41 (1990), 725–729; also C. H. Lawrence's review in *The Tablet*, 6 January (1990), 14. See also C. H. Lawrence, 'Origins and Development of Clerical Celibacy' in *Clergy Review*, 1975, 138–146. Also the review by Peter L'Huillier in *Sobornost*, 12 (1990), 180–182. More recently, however, a Catholic priest in Germany has produced a careful re-examination of the patristic texts and argues in favour of the thesis of Cochini and Cholij. He claims that there is convincing evidence for an *obligation* to continence on the part of married clergy long before the fourth-century papal decretals. See Stefan Heid, *Zölibat in der frühen Kirche. Die Anfänge einer Enthaltsamkeitspflicht für Kleriker in Ost und West* (Paderborn 1997).

[98] St Gregory Nazianzen's father was a bishop, Bishop Gregory the Elder of Nazianzus. St Gregory of Nyssa was also married. See Roger Gryson, *Les origines du célibat ecclésiastique* (Gembloux 1970). For a lengthy list of bishops, priests and deacons who were married in the first seven centuries of the Church, both in the East and in the West, see C. Cochini, *Apostolic Origins*, 84–134.

[99] At the Council held at Ancyra, the capital of Galatia, around the year 314, canon 10 assumes that those in major orders could not marry after ordination: 'They who have been made deacons, declaring when they were ordained that they must marry, because they were not able to abide so, and who afterward have married, shall continue in the ministry, because it was conceded to them by the bishop. But if any were silent on this matter, undertaking at their ordination to abide as they were, and afterwards proceeded to marriage, these shall cease from the diaconate'. H. R. Percival (editor), *The Nicene and Post-Nicene Fathers*, vol. XIV, 67. Very soon after this, between 314 and 325, a synod held at Neocaesarea in Pontus, declared in its first canon: 'If a presbyter marry let him be removed from his order; but if he commit fornication or adultery, let him be altogether cast out [i.e. of communion] and put to penance'. ibid., 79. Gratian has included this canon in the *Decretum*, D.28, c.9. Following Isidore, Gratian has added 'among the laity' *(inter laicos)*, which is not in the Greek text.

has come down to us concerning priestly continence. It is an isolated document not generally known at that time, even in the West, and it did not make celibacy obligatory.[100] The earliest papal decretal on the matter is a reply of Pope Siricius (384–399) to a letter that Himerius, metropolitan of the province of Tarragona, had sent to his predecessor, Pope Damasus (366–384). This decretal of 385 contained instructions with regard to clerical continence. He had received, the pope said, news from Spain that many clerics there continued to live with their wives and have children. This, he maintained, was a serious violation of the Church's discipline of clerical continence.[101] In the following year Pope Siricius sent out a letter to a number of provinces, including Africa, in which he included a long exhortation on clerical continence.[102] At about the same time, in a decretal letter to the bishops of Gaul, the pope ruled that a married man might be ordained but he had to cease to cohabit with his wife, under pain of deposition.[103] In the centuries that followed there was increasing pressure from Rome and in regional councils in the West for a continent if not celibate, clergy. We have seen how canon 33 of the Council of Elvira required continence of all clergy under pain of deposition. This canon was included in Part II of the False Decretals along with many other Western canons on this subject. In general, the False Decretals stress the importance of clerical continence for all priests and deacons, and severe penalties are laid down for those who do not observe it. A number of genuine canons in the Pseudo-Isidorian collection emphasize the importance of clerical celibacy and the punishment to be inflicted on clerics who failed to practice sexual continence. The canons imposing clerical continence were clearly not being observed, as can be seen from some ferocious legislation

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[100] 'Placuit in totum prohibere episcopis, presbyteris, diaconibus, ac subdiaconibus positis in ministerio abstinere se a conjugibus suis, et non generare filios. Quod quicumque fecerit, ab honore clericatus exterminetur'. Council of Elvira, canon 33. PL, vol. 130, col. 417. ('It has seemed good absolutely to forbid the bishops, the priests, and the deacons and subdeacons in the service of the ministry, to have [sexual] relations with their wives and procreate children; should anyone do so, let him be excluded from the honour of the clergy'). See, C. Cochini, *Apostolic Origins*, 159. Samuel Laeuchli, *Power and Sexuality: The Emergence of Canon Law at the Synod of Elvira* (Philadelphia 1972).

[101] See the decretal letter, *Directa*, PL, vol. 13, cols 1138a–1139b, quoted by C. Cochini, *Apostolic Origins*, 9. On these decretals of Pope Siricius, see Daniel Callam, 'Clerical Continence in the Fourth Century: Three Papal Decretals', *Theological Studies* 41 (1980), 3–50. What was stressed in these early decretals as a primary motive for clerical continence was ritual purity in preparation for celebrating the Eucharist. See Paul Beaudette, '"In the World but not of It": Clerical Celibacy as a Symbol of the Medieval Church', in *Medieval Purity and Piety. Essays on Medieval Clerical Celibacy and Religious Reform*, edited by Michael Frassetto (New York and London 1998), 23–46.

[102] Decretal letter, *Cum in unum*, PL, vol. 13, cols 1160a–1161a, quoted by C. Cochini, *Apostolic Origins*, 11.

[103] Decretal letter, *Dominus inter*, attributed variously to Pope Siricius, Pope Innocent I (401–417), or Damasus (386–384). PL, vol. 13, cols 1184a–1186a. See C. Cochini, *Apostolic Origins*, 14–15.

in seventh-century Spain.[104] Some provincial councils stipulated the penalty of enslavement for the mistresses and the children of clerics in sacred orders.[105] A few examples will illustrate the drastic measures taken by the church authorities in Spain. Women who have sexual relations with clerics are to be sold into slavery by the bishop:

> There are certain clerics, who are not lawfully married, but who seek out the company of servant girls or strangers. Therefore any women who form liaisons of this kind with clerics are to be taken away and sold into slavery by the bishop, the clerics in question are to be put in chains for a time to do penance because of the people they have infected by their lust.[106]

This legislation does not seem to have succeeded in eradicating the problem, for, about twenty years later, at another council in Toledo, the bishops decided to extend the punishment in such a way that it would strike not only the perpetrators of the crime, but also their offspring:

> With regard to all clerics – from bishop to subdeacon – who while in Holy Orders form a detestable liaison with a maid or a free woman and beget children [it is decreed]: those from whom the children are proved to have been born are to be condemned to a canonical penance; as for the children born from another's defilement (*aliena pollutione*), not only will they never inherit from their parents, but also they will remain in perpetual servitude to the church of the priest or minister, from whose ignominious behaviour they have been born.[107]

These canons were included in the False Decretals, not surprisingly, since one of the aims of the producers of these in the ninth century was to strengthen the law on clerical celibacy.[108]

In the East, as in the West, there had always been a strong movement that encouraged sexual continence among the clergy, and it would be inaccurate to say that Eastern clerics were completely free to marry. Patristic teaching proposed

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[104] See James A. Brundage, *Law, Sex, and Christian Society,* 171–172.

[105] Gratian, *Concordia,* D.81, canon 30; C.15 q. 8, canon 3.

[106] 'Quidam clerici legitime non habentes conjugium, extranearum mulierum vel ancillarum suarum interdicta sibi consortia appetunt, ideo quae conjunctae taliter cum clericis sunt ab episcopo auferantur et venumdentur, illis pro tempore religatis ad paenitentiam quos sua libidine infecerunt'. The False Decretals, Fourth Council of Toledo (633), can, 42, PL, vol. 130, col. 474.

[107] 'Ideoque quilibet ab episcopo usque ad subdiaconum deinceps vel ex ancillae vel ex ingenuae detestando connubio in honore constituti filios procrearent, illi quidem ex quibus geniti probantur canonica censura damnentur. Proles autem aliena pollutione non solum haereditatem parentum nusquam accipiet, sed etiam in servitutem ejus ecclesiae, de cujus sacerdotis vel ministri ignominia nati sunt jure perenni manebunt'. The False Decretals, Ninth Council of Toledo (655), canon 10, PL, vol. 130, col. 524 (in Gratian's *Decretum,* C.15, q.8, can. 3).

[108] See Hinschius *Decretales Pseudo-Isidorianae,* 32–33; 90; 340, 430–431. James A. Brundage, *Law, Sex and Christian Society,* 171–172.

continence as particularly fitting for the priest because of the dignity of virginity and the need for the priest to be completely detached in order more effectively to do God's work. However, within certain clear limits the Greek Church permitted the ordination of married men and they were allowed to live as married men. The *Nomokanon in XIV Titles* has very clear legislation on the legitimacy of clerical marriage. One of the clearest statements on the subject is canon 13 of the Council *in Trullo* (691):

> Whereas we recognize that in the Church of Rome it has been handed down in the canons that those who are to be ordained deacons or presbyters should promise to have no further intercourse with their wives, we, following the ancient canon of strict Apostolic observance and discipline, desire that the lawful marriages of holy men should henceforth remain in force. In no way do we dissolve the union with their wives, nor prevent them having conjugal intercourse at appropriate times. Therefore, if anyone is deemed worthy of ordination as subdeacon or deacon or presbyter, he shall in no way be prevented from advancing to this rank whilst living with his lawful wife; nor shall he be required, at the time of his ordination, to promise to refrain from lawful intercourse with his wife; otherwise we should virtually mock marriage, ordained and blessed by God through his presence, as the voice of the Gospel exclaims: 'What God has joined together, let no man separate' (Mt 19:6) and the Apostle teaches:'Let marriage be held in honour by all and let the marriage bed be kept undefiled' (Heb 13:4), and 'Are you bound by a wife? Do not seek to be free' (1 Cor 7:27). We know indeed that the Fathers who gathered in Carthage, making provision for the propriety of the lives of the ministers of the sacred liturgy, said that 'subdeacons who touch the holy Mysteries, as well as deacons and presbyters, must abstain from their wives in accordance with their particular statutes <regarding their turn of service>; 'thus may we also preserve the tradition passed down by the holy Apostles, which has prevailed from the earliest time, knowing that there is a time for everything, especially fasting and prayer; for it behoves those who approach the altar when the holy gifts are handled to be continent, that they may obtain what they sincerely ask of God. If anyone, therefore, acting at variance with the Apostolic canons, dares to deprive anyone in holy orders, that is, a presbyter or deacon or subdeacon, of intercourse and communion with his lawful wife, he shall be deposed. Likewise, if any presbyter or deacon sends away his wife on the pretext of piety, he shall be excommunicated; and if he persists, he shall be deposed.[109]

It has been argued that this canon was an innovation in the Eastern Church and went against what had been the tradition both in the East and the West until that time. This has not been proved. Canon 13 of *in Trullo* does have precedents and

[109] Canon 13 of the Council *in Trullo*. English translation from *The Council in Trullo Revisited*, 84–87. R. Cholij, in *Clerical Celibacy in East and West*, has tried to show that this Trullan legislation permitting married clergy to have sexual relations with their wives was in fact an innovation and went directly against the Apostolic tradition of perpetual continence for all clerics. As I have indicated above, Cholij's arguments have left many unconvinced.

is in harmony with a number of earlier canons from Eastern councils. It was accepted as an expression of a tradition that the Church followed from Apostolic times. Canon 5 of the *Apostolic Canons*, which reflect the discipline followed in fourth-century Antioch, states: 'Let not a bishop, presbyter or deacon put away his wife under pretence of religion; but if he put her away, let him be excommunicated; and if he persists let him be deposed'.[110] There are a number of other canons in the official canonical collection prescribing the same discipline.[111] Justinian I had forbidden the appointment to the episcopate of married men who had children and had formally limited the episcopate to men who were celibate, widowers, or separated from their wives.[112] This imperial legislation was taken over by the Council *in Trullo* in canon 12 which prohibits a bishop from cohabiting with his wife after his episcopal ordination. In that canon it is noted that 'in Africa and Libya and other places the local bishops, most beloved of God, do not renounce living with their wives, even after ordination, thereby causing offence and scandal to the people'. The Greeks will not permit this: 'we are resolved that henceforth no such thing should be done'. This canon is contrary to canon 5 of the *Apostolic Canons*, that has just been referred to. The alteration of such an old tradition was later explained as follows. The early Fathers realized that at the beginning when the faith was not yet fully developed, the Church had to be rather lenient and not make requirements that were too severe for people emerging from paganism and Judaism. So even bishops were permitted to go on living with their wives. However, the faith developed and Christians became more mature and able to follow a stricter observance. This is seen in canon 12 of *Trullo* which forbids bishops even to live with their wives.[113] In canon 48 the Trullan Council prescribed that 'The wife of one who has been promoted to the rank of bishop, having previously been separated by mutual consent from her husband, shall, after his ordination as a bishop, enter a monastery situated far away from the episcopal residence, and she shall enjoy benefit from the provision made for her by the bishop; and if she proves worthy, she shall be promoted to the dignity of deaconess'.[114] The Trullan Council, however, did not formally prohibit the episcopal ordination of married men, nor did it say anything about children being an impediment to episcopal ordination. However, canons 12 and 48 of the Trullan Council led to the current practice of only ordaining to the episcopate celibate priests.

The Council *in Trullo* in 691/692 is the point which marks the divergence in discipline between East and West with regard to marriage or celibacy for the

[110] H. R. Percival (editor), op. cit., 594.

[111] For example, Gangra, canon 4; Council of Carthage, canons 3,4, and 23.

[112] CJ, I, 3, 41, 2–4, 47. See also *Novella* 6, 1, 36.

[113] This is how the twelfth-century canonist, Zonaras, explained this change, and Balsamon agreed with this explanation. RP, vol. 2, 331–332.

[114] Canon 48 of the Council *in Trullo*. English translation from Michael Featherstone's translation in *The Council in Trullo Revisited*, edited by G. Nedungatt and M. Featherstone, 130.

clergy. It is interesting to note how this Trullan canon 13 has now been explicitly accepted by the Catholic Church as one of the sources for canon 373 in the *Code of Canons for the Eastern Churches,* promulgated in 1990. This canon states:

> Clerical celibacy chosen for the sake of the kingdom of heaven and so suited to the priesthood is to be greatly esteemed everywhere, as supported by the tradition of the whole Church; likewise the state of clerics joined in matrimony, as sanctioned by the praxis of the primitive Church and for centuries in the Eastern Churches is to be held in honour.[115]

The Trullan legislation remains substantially the legislation that is followed today by the Orthodox Churches as well as the Syrian Orthodox Church and the Assyrian Church of the East.

To sum up the points made so far concerning the clergy. From the end of the fourth century onwards in the West there was an increasing insistence on continence for the clergy. Throughout the rest of the first millennium in the West the clergy could be married but, after ordination, they were expected to abstain from sexual relations with their wives. Patristic writings show that the motivation for clerical continence was diverse; but there seem to have been two dominant motives: firstly, to be free from what was then considered the degrading passionate activity involved in sexual behaviour, which was thought to be incompatible with a prayerful life because it was not entirely under the control of the reason; and secondly, to avoid the ritual or cultic impurity caused by sexual intercourse.[116] As we have seen above, the Council *in Trullo* in canon 13 also required sexual abstinence from the clergy at appropriate times, as on the eve of a celebration of the Eucharist. Meyendorff makes an interesting comment on the diversity between East and West in this matter: 'It does appear, however, that as a general rule, the East understood celibacy and continence less as a preservation of ritual purity and more as an ascetical anticipation of the eschatological parousia, where there will be "neither male, nor female". The proper context for such asceticism was therefore seen in the monastic discipline'.[117]

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[115] It is interesting to see the ancient Eastern sources that are given for this canon in the CCEO. The sources for canon 373 that are mentioned are *Apostolic Canons*, canon 5; Carthage, canon 3; Trullan canons 3, 6, 13, 30; Cyril of Alexandria, canon 4.

[116] See Roger Gryson, *Les origines du célibat*, 127–201. It is clear from Gryson's study that the motives behind clerical continence were varied, though Gryson himself maintains that the principle governing the introduction of the law of continence in the West, from the end of the fourth century onwards, was that of ritual purity in connection with the celebration of the Eucharist. Gryson has been criticised for stressing this to the neglect of other more spiritual factors that influenced the development. It would, however, be a mistake to regard this 'ritual purity' simply as a sort of magic tabu. It is open to a much profounder and more spiritual interpretation.

[117] John Meyendorff, *Imperial Unity and Christian Divisions*, 54.

Different Approaches to Divorce and Re-Marriage

That matrimonial legislation occupied a prominent place in Eastern church law is clear from the amount of space given to it in the *Nomokanon.*[118] Since marriage was considered both a contract and a sacrament, this was a sphere where ecclesiastical legislation overlapped with imperial laws and there was much scope for conflict of jurisdiction, in spite of steady efforts by the clergy to bring marriage law under the effective and exclusive control of the church. It had been a very ancient practice for Christians to celebrate marriage in church and marriage with the priestly blessing had become common. However, the priestly blessing did not become a legal requirement in the Greek Church until the beginning of the tenth century. In 911, to emphasise the sacramental character of marriage, Emperor Leo VI (866–912) issued his *Novella* 89 on the subject. This laid down that the priestly blessing was essential for the validity of every marriage. In so doing the emperor emphasised the role of the Church and the essentially sacred character of marriage. He decreed as follows:

> We order that marriage be confirmed by evidence of a sacred blessing. Therefore, if those who want to get married do not comply with that procedure, from its inception this union shall not be considered as marriage, and such cohabitation will not produce legal effects.[119]

In the East what was also considered central was conjugal love: marriage was seen primarily as a community of love. The legal texts frequently refer to the description of marriage by the Roman lawyer Modestinus:

> *Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio.*[120] (Matrimony is the union of a man and a woman and a sharing of their whole lives, an exchange of rights divine and human).

The emphasis is on *maritalis affectio* – marital love – and the communion of life and love in marriage. This description of marriage would later be put forward as the reason for the prohibition of mixed marriages in canon 72 of the

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[118] Marriage is dealt with in Title XIII of the *Nomokanon* which has ten chapter-headings on sexual matters.

[119] *Novella* 89, 295–297. Leo VI endorsed the church's teaching about re-marriage: a second marriage was acceptable if appropriate penance was done. Under certain circumstances even a third marriage might be condoned, but a fourth marriage was prohibited. See *Novella* 90. In the West also marriages were commonly celebrated in church with the priestly blessing, but this did not become a legal requirement for validity in the Latin Church until the promulgation of the decree, *Tametsi,* in 1563 by the Council of Trent.

[120] *Digest,* 23.2.1.

Trullan Council.[121] The Greek Fathers stressed that marriage should be a relationship of respect and caring love ordained by God.

In the vision of the Greeks, it is the Holy Spirit who, through the sacred rite performed by the priest, consecrates the couple who have pledged their mutual fidelity in the eyes of the Church. The grace of the sacrament comes down upon them through the blessing of the priest – and without this blessing there can be no sacrament. The priest is, therefore, considered the minister of the sacrament of matrimony and the mutual consent of the couple is regarded as the indispensable precondition for receiving the sacrament.[122]

As for procreation and education of children: this is held to be a blessing from God – as the Orthodox liturgical rite emphasizes – but procreation is not put forward in the Eastern law as the primary aim of marriage. Orthodox theologians and canonists are in agreement about the permanence and uniqueness of the sacrament of marriage. Canonical and liturgical traditions maintain that second marriages are inconsistent with the Christian norm. The principle of the indissolubility of Christian marriage is founded on Christ's command in the Gospels which the Orthodox and the Eastern 'Pre-Chalcedonian' Churches claim to take seriously. In principle the marriage bond should not be broken. However, because of man's sinful condition, marriages do in fact break down for a variety of reasons. The Orthodox Church's granting permission for remarriage after divorce is the acceptance of this situation. It is granted to the innocent party in certain circumstances and is an attempt to provide a compassionate solution to a problem of those Christians who would otherwise be con-

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[121] See T. Balsamon in the twelfth century, commenting on canon 72 of the Trullan Council: RP, vol. 2, 472 (PG, vol. 137, col. 759B), where he gives a shortened version of Modestinus: Ὁ πολιτικὸς νόμος τὸν γάμον ὁρίζεται κοινωνίαν καὶ συγκλήρωσιν θείου τε καὶ ἀνθρωπίνου δικαίου. Ἀκολούθως οὖν τούτοις διορίζονται οἱ ἅγιοι Πατέρες, μὴ συνάπτεσθαι κατὰ νόμον γάμου ὀρθόδοξον ἄνδρα αἱρετικῇ γυναικὶ, ἢ τὸ ἀνάπαλιν. ('The civil law defines marriage as communion and the exchange of rights divine and human. Consequently, following this view, the holy Fathers decree that a man who is a true believer should not be legally joined in matrimony with a heretical woman or vice versa').

[122] This is in contrast to the Latin view that the ministers of the sacrament of matrimony are the spouses themselves. However, it should be remembered that there was a long tradition also in the Latin Church which held for centuries that the minister of the sacrament of matrimony is the priest who assists and pronounces the blessing. For example, this was the view of Melchior Cano (1509–1561) in *De locis theologicis* (lib. VIII, cap. 5, nn.8–15). The teaching remained uncertain for a long time; so much so that in the first half of the eighteenth century Prospero Lambertini could state that the opinion which maintained that the priest was the minister of matrimony was still 'valde probabilis' (In *De Synodo Dioecesana,* VIII, XIII, n. 2). Lambertini was the distinguished Latin canonist who, in 1740, became Pope Benedict XIV. Some years later the Congregation for the Council proposed as the truer and more acceptable opinion (*verior et receptior sententia)* the view which held that the spouses themselves were the ministers of the sacrament. This was then confirmed by the canons in the 1917 CIC which recognized as licit and valid a marriage contracted without the presence of the priest in certain exceptional circumstances. For a discussion of the question, see Louis Ligier, *Il Matrimonio* (Rome 1988), 77–79.

demned to a life of enforced continence through no fault of their own. As we have already seen in the first chapter, this is a long tradition in the Eastern Churches, dating back to long before the division between Rome and Constantinople. To see this in its context, it is important to consider briefly the Roman Law on divorce and re-marriage.

Classical Roman law considered marriage and divorce a private matter that took place by the mutual consent of the parties. Marriage depended on cohabitation and *maritalis affectio* and if either of these ceased to be then the marriage could be terminated without much formality. The first Christian emperors took over the Roman legislation on divorce and modified it. In 331Constantine established specific grounds on which a bill of divorce could be brought by a woman to her husband and by a husband to his wife. It is not clear if this removed completely the possibility of divorce by mutual consent. Later emperors restricted and clarified the reasons for which a divorce could be granted, and in this legislation it was assumed that divorce was for the purpose of re-marriage.[123] It was Justinian, in the sixth century, who in a series of constitutions promulgated what became the definitive law on divorce for the Eastern empire. In 535 he issued a new code on divorce, *Novella* 22, which was a complete revision of the law on divorce and re-marriage. For Justinian it is mutual affection that constitutes marriage – *Nuptias itaque affectus alternus facit.*[124] Divorce is possible since 'whatever is bound is soluble' – 'quidquid ligatur solubile est'. These were the presuppositions for Justinian's legislation on divorce and re-marriage, and he went on to indicate four ways in which a marriage could be ended: by mutual consent, on rational grounds called *bona gratia*, without cause, and with rational cause which is not *bona gratia.*[125] Noonan observes that the divorce legislation in *Novella* 22 seemed to 'reflect a view that divorce was undesirable for its effect on the property rights of the children, not because of its severing a natural or indissoluble bond.'[126] Justinian codified a number of causes for the dissolution of a marriage, the desire of one of the partners to live a chaste life in religion, impotence, and the enslavement of one of the parties. Being taken prisoner did not in itself dissolve a marriage, but a divorce was granted if, after five years, the existence of the captive was uncertain.[127] Seven years later, in 542, Justinian promulgated another constitution on marriage, *Novella* 117, in which he aimed to strengthen the status of marriage entered into by affection alone, without a dowry, and to protect the rights of the children of

[123] For example, Honorius and Constans II (*Codex Theodosianus*,3.16.2); Theodosius II and Valentinianus III (*Codex Iustinianus*, 5.17.8).

[124] *Novella* 22.3.

[125] *Novella* 22.4.

[126] John T. Noonan, Jr., 'Novel 22', W. Basset (editor), *The Bond of Marriage* (Notre Dame and London 1968), 60.

[127] *Novella* 22.7.

marriages which had been broken by divorce.[128] The new law discouraged easy divorce and greatly reduced the legal causes for which a divorce could be granted. It was in general much more restrictive than *Novella* 22, but it still did not assert any general principle of absolute indissolubility. Divorce by mutual consent was eliminated, except in the case where one of the parties wished to enter a monastery. This constitution also required the intervention of a judge in every case.[129] Justinian's final legislation on divorce was issued in 556 in *Novella* 34. Divorce by consent was once again forbidden, and it was reiterated that divorce was only permitted on the grounds enumerated in the law. Also severe penalties were introduced for cases where the law had not been observed. The law continued to evolve and to take into account increasingly the Church's view on marriage. This development culminated in a series of constitutions issued by Leo VI (886–912). Leo was more of a scholar than a soldier and had been educated by one of the most learned Byzantine scholars of his time, Patriarch Photios. The extensive revision of Justinian's *Corpus Iuris Civilis* – known as the *Basilika* – was completed in the early years of Leo's reign (around 888); and it was while he was co-emperor that a new edition of the *Nomokanon in XIV Titles*, was produced (c.882).

This divorce legislation was introduced by Christian emperors who, while claiming to uphold a religious attitude to marriage, never made any assertions that marriage was absolutely indissoluble. On the contrary, re-marriage after divorce was positively permitted in certain cases and there was no indication that this was thought to be inconsistent with accepted Christian morality. Moreover, these Christian emperors fully intended that their legislation should be in harmony with the Church's teaching. Justinian was well-read in theology and regularly sought the counsel of theologians. His Code began 'in the name of our Lord Jesus Christ', and went on at once to set out the emperor's confession of faith.[130] All this gives the impression that there was as yet no clear and definite official church teaching on divorce and re-marriage. There was no systematic treatment of marriage in the first centuries of the Church in the East or in the West. Only very gradually did a matrimonial canon law develop. Justinian's legislation influenced greatly the whole theory and practice concerning divorce in the Church in Constantinople. As Noonan has observed, 'The calm acceptance of dissolubility by the law shows that at this time, between 331 and 566, no definitive Christian position had been established on re-marriage and divorce'.[131] Meyendorff observes that while the possibility of divorce was an integral part of Byzantine civil law at all times, this was not formally challenged by the Church. He notes that while the Greek Fathers were often quite fearless in

[128] *Novella* 117.
[129] *Novella* 117. 10.
[130] CJ, 1.1.5.
[131] J. Noonan, op. cit., 87.

challenging the imperial power, they never protested against the civil legislation on divorce.[132] None of the early church councils promulgated canons that specifically forbade re-marriage after divorce.

In this context, canon 8 of the First Council of Nicaea (325) raises some interesting questions. This canon deals with the so-called Cathars, probably Novatianists.[133] These, when they wish to return to full communion, are to be allowed to remain among the clergy, 'but before all this it is fitting that they give a written undertaking that they will accept and follow the decrees of the Catholic Church, namely that they will be in communion with those who have entered a second marriage and with those who have lapsed in time of persecution, and for whom a period [of penance] has been fixed and an occasion [for reconciliation] allotted'.[134] Who were these 'διγάμοι' at the beginning of the fourth century? It has generally been assumed, in the West at any rate, that they were persons who had married a second time after the death of their first spouse. But this is not self-evident. It has been argued that 'while the Church during the early patristic period may have excommunicated and subjected to penance persons who had re-married after illicit divorce, satisfaction did not originally require, as it did in the West in due course, that the penitent should renounce the new partner at least to the extent of permanently abstaining from sexual relations with her or him'.[135] If this is the correct interpretation of Nicaea I, it means

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[132] 'The possibility of divorce remained an integral part of Byzantine civil legislation at all times. In the framework of the "symphony" between church and state, it was never challenged, a fact which cannot be explained simply by reference to caesaropapism. The Byzantine Church never lacked saints who were ready to castigate imperial despotism, social injustice, and other evils contrary to the Gospel. John Chrysostom (398–404), Theodore the Studite (d. 820), or Patriarch Polyeuktos (956–970) were able to challenge the power of the state without fear; none of them, however, protested against the legislation concerning divorce'. J. Meyendorff, *Byzantine Theology* (New York 1974), 197–198. On the other hand, this assumption that the Eastern Church in the early centuries did not oppose the civil provision for divorce with the right of re-marriage has been challenged by Henri Crouzel, *L'Église primitive face au divorce au cinquième siècle.* This is a scholarly study of the Roman Catholic Church's teaching and practice with regard to marriage and divorce in the first five centuries in which the author argues that there is little evidence in those centuries of a tradition permitting re-marriage after divorce during the lifetime of the first spouse. Crouzel has argued his case well and has convinced many that the evidence in the first five centuries for a tradition permitting re-marriage after divorce during the lifetime of the first spouse, is so meagre as to be virtually negligible. However, he has not convinced everyone. Some have questioned his principles of interpretation when reading early patristic texts. See the review of his book by J. A. Sherlock in *Theological Studies,* 33 (1972), 333–338. Crouzel's view has also been challenged by G. Cereti, 'The Reconciliation of Re-married Divorcees according to Canon 8 of the Council of Nicaea', *Ius Sequitur Vitam. Law Follows Life,* edited by J. H. Provost and E. K. Walf (Louvain1991), 193–207.

[133] The Novatianists were a rigorous party in the early Church which disapproved of any concessions to those who had compromised with paganism under persecution.

[134] DEC, vol. I, 10.

[135] L. Reynolds, *Marriage in the Western Church. The Christianization of Marriage during the Patristic and the Early Medieval Periods* (Leiden-New York-Cologne 1994),148, where Rey-

that re-married divorcees would have been included among the 'διγάμοι' who were in full communion with the Catholic church, in spite of being re-married. This would mean that the Eastern Church's manner of treating re-married divorcees goes back to the very first ecumenical council and pre-dates the stricter development of the Western Church under the influence of St Augustine. As we have seen, St Basil in his canonical letters stated that a man not only may, but must divorce a wife guilty of πορνεία and that such a man could be re-admitted to communion.[136] The civil laws on divorce and re-marriage that we have enumerated were, by and large, taken over into the *Nomokanon in XIV Titles* and the conciliar canons and patristic texts were included in the chronological collection of canons.

In the Western Church a different tradition developed. As in the East, there was always a clear profession of fidelity to Christ's teaching on the indissolubility of marriage. This was received by all as the will of God revealed in Jesus Christ. However, problems arose about what could or should be done for individual Christians who found themselves in very difficult marital situations. On this point there are indications of tolerance and leniency being exercised also in the West. Until the end of the fourth century there was no general legislation expressly stipulating a strict interpretation of Mt 19:9. There were certainly a number of Latin Fathers in the West, such as Ambrose (339–397), Jerome (340–420) and Augustine (354–430), who taught unequivocally that Christian marriage was indissoluble and that there could be no re-marriage.[137] But during the first millennium there were moves here and there to be tolerant. The *Penitential* of Archbishop Theodore of Canterbury (d. 690) allowed re-marriage to the husband whose wife has committed adultery. Theodore was a Greek from Tarsus and he referred to the canon from St Basil that we have already considered. In the eighth century several local councils permitted divorce and re-marriage in certain circumstances.[138] However, gradually a stricter approach was adopted in the West which condemned all re-marriage after divorce while the partner is alive. Pope Innocent I (402–417), in a letter to the Bishop of Toulouse, states clearly that those who, after divorce, marry again are to be considered adulterers.[139] The Pseudo-Isidorian Decretals include a number of

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nolds refers to the arguments put forward by G. Cereti in his book, *Divorzio, nuove nozze e penitenza nella Chiesa primitiva* (Bologna 1977), 270–354.

[136] See Chapter One, page 33.

[137] Canon 1013#2 of the 1917 Code states that the essential properties of marriage are unity and indissolubility. It is interesting to note that the sources listed from the first millennium for this canon are almost all from St Augustine, as cited by Gratian. See, for example, *Concordia Discordantium Canonum*, C.32, q.7, canons 1, 27.

[138] 'On the other hand, the Councils of Verberie in 756 and Compiègne in 757 allow re-marriage in the case of incestuous adultery on the part of the guilty husband'. O. Rousseau, 'Divorce and Re-marriage: East and West', *Concilium*, vol. 4, no. 3 (1967), 64.

[139] Innocent I, Mansi, vol. III, 1049. Rousseau, op. cit., 68; PL, vol. 130, cols 704–705.

canons from regional councils where it is made plain that marriage should be both monogamous and indissoluble.[140] In this they expressed the teaching that would become the accepted teaching of the Latin Church in the West. As will be seen later, the texts chosen by Gratian for his *Concordia Discordantium Canonum* rule out the possibility of marriage after divorce.[141] Opposition to the usages of the Greek Church in this matter became clearer.[142] This is another example of two different traditions evolving in very different situations, each with a different mentality and outlook.[143]

Conclusion

In the late ninth century Rome and Constantinople formed the Eastern and the Western parts of the Catholic Church. There had been difficulties, caused by the struggle between the followers of Patriarch Ignatios and those of Patriarch Photios, but these had been resolved at the 'Council of Reunion' in Hagia Sophia in 879/880. There was, however, a diversity of regimes in the East and in the West. The bishop of Rome did not legislate for the Church of Constantinople nor did he intervene in its administration, except in very exceptional circumstances, as in the case of the appeal to Rome by Patriarch Ignatios. The Church of Constantinople had its own canonical collection, distinct from that of the West, and it included no papal decretals. The Church of the West, while

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[140] See Hinschius, *Decretales Pseudoisidorianae*, 87–88; 265–266; 340–343.

[141] See, for example, C.32, q.7, canons 1, 27.

[142] 'Nevertheless, in the official documents of the Roman Church of that period which concern the Greeks, no mention is made of divorce. It is not mentioned in the letter of Innocent IV for the Greeks of Cyprus which nonetheless recommended many Latin usages, nor in the profession of faith imposed after the Council of Lyons of 1274 on the emperor Michael Palaeologus; the profession is content to state in a general manner that it is not permissible for husbands to have several wives at the same time or for wives to have several husbands. At the Council of Florence, when the question was proposed in the very last place by Pope Eugene IV, after the decree of unification had been signed, the Greeks answered that if they sometimes allowed divorce this was not without reason (*ouk alogos*) – we recognise Origen's formula herein – and the matter was not pursued any further'. Rousseau, op. cit., 64. It should be remembered too that Trent modified the first version of canon 7 of Session XXIV, which prohibited divorce, precisely because of the custom of the Greeks. In this way some sort of respect was being shown to an immemorial custom of the Greek Church. For a short but informed discussion of this question, see Piet Fransen, 'Divorce on the grounds of adultery in the Council of Trent (1563)', *Concilium*, vol. 5, no. 6, May (1970), 89–100. See also the well-documented discussion of the Tridentine canon by Luigi Bressan, *Il Canone Tridentino sul Divorzio per Adulterio e l'Interpretazione degli autori* (Rome 1973). This was followed in 1976 by another fine study by Bressan, in *Il Divorzio nelle Chiese Orientali. Ricerca Storica sull'Atteggiamento Cattolico* (Bologna 1976).

[143] For a recent well-documented study of the way the 'Matthean exception' was interpreted by the Fathers in the Western Church, see P. L. Reynolds, *Marriage in the Western Church*, especially 173–240.

having in common with Constantinople the canons of the early Eastern councils, was more and more administered by means of papal decretal letters.

The comparison between the canon law that guided the Church in the East and in the West has brought into sharper focus the similarity and the diversity in the different traditions. During the first millennium of the Church's history, when there was full doctrinal union and ecclesial communion between Constantinople and Rome, diverse administrative, disciplinary and liturgical usages legitimately co-existed within one united Church. Each one of these Churches recited the same Creed, read the same Holy Scriptures, and professed the same faith in Jesus Christ and in his One, Holy, Catholic and Apostolic Church. Yet the Christian community has never had a uniform structure and a uniform discipline. There were different ways of exercising legislative authority in the East and in the West. In Rome and the Western Church, there gradually developed a highly monarchical mode of government by the bishop of Rome, becoming more and more centralised. Whereas in Constantinople and the Eastern Empire, there was patriarchal synodal government, modified for centuries by imperial legislation.

The difference between the two approaches can be seen clearly and dramatically if we compare two outstanding personalities of the ninth century: Pope Nicolas I[144] and Patriarch Photios.[145] What is referred to as the 'Photian Schism' was caused by the clash between these two church leaders.[146] Pope Nicholas is

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[144] Nicholas I was elected pope in 858. He was of a Roman noble family, had served three popes before being appointed pope himself at the age of about forty. Strong-minded, with a very strong sense of his supreme power over the whole Church – East and West. He had an exalted view of the papal office and strenuously defended the universal primacy of the Bishop of Rome, using the False Decretals to confirm his position. He effectively exploited political crises in France, Italy and Byzantium. His delegates to Constantinople in 861 sided with Photios, but in 863, Nicholas allowed himself to be persuaded by the followers of Ignatios in Rome and proclaimed that Photios had been uncanonically elected. Nicholas was very happy to use the appeal of the Ignatians to intervene in Constantinople.

[145] There is a well-documented discussion of Patriarch Photios and his relations with Rome by Hans-Georg Beck in *Handbook of Church History*, Volume III, *The Church in the Age of Feudalism*, 'The Byzantine Church in the Age of Photios' (London 1969), 184–193. Also on Photios, see Leslie Brubaker, *Vision and Meaning in Ninth-Century Byzantium* (Cambridge 1999), 201–202. Brubaker thinks that the best modern assessment of Photios is to be found in Cyril Mango, 'The Liquidation of Iconoclasm and the Patriarch Photios', A. M. Bryer and J. Herrin (editors), *Iconoclasm* (Birmingham 1977), 133–140. Cyril Mango has established that Photios came from an eminent family characterized by its iconophyle tendencies: his mother Eirene was related by marriage to the former Empress Theodora, under whose aegis Iconoclasm ended in 843; and he was related on his father's side to the former patriarch Tarasios (784–806), who presided over the council that restored the veneration of images in 787. Photios himself was an important civil functionary, and held the office of *protasekretis* (head of the imperial chancery) before his elevation to the patriarchate in 858.

[146] 'Considered from the angle of historical developments, the Schism can be understood as the colliding of two concepts of the nature of the Church, which had long developed separately without persons becoming aware of this on the one side or the other: the "Constantinian" Byzantine idea,

revered as the Roman champion of papal primacy, whereas for centuries Photios has embodied for the Latin West all the evils of the Greek East. However, the modern appreciation of him is overwhelmingly positive. Obolensky called him the 'greatest theologian and philosopher of his age', and 'one of the greatest Byzantine scholars of all time';[147] for Nigel Wilson, Photios is 'the most important figure in the history of classical studies in Byzantium.'[148] He is venerated as a saint by the Greek Orthodox Church.

At the Council of Constantinople of 869/870, Photios was anathematized together with all his supporters, and his writings relating to the council he had held in Constantinople and in which he had anathematized Pope Nicholas I were solemnly burned. The council was held in Hagia Sofia and was attended by a delegation from Pope Hadrian II. This council is not accepted as a general council by Constantinople because it was repudiated by the later council of reconciliation held in 879. In the Catholic Church it has long been accepted as the Fourth Council of Constantinople, and, since the eleventh century, it has been listed as the eighth ecumenical council.[149] There is sound evidence to show that the 869/870 council was repudiated by Pope John VIII and that the council of 879/880, when peace was re-established between Rome and Constantinople, should be the council that is remembered as official. The continued inclusion of the acts of this so-called 'Fourth Council of Constantinople' in Catholic collections has done great harm to relations between Rome and Constantinople. Photios was reconciled with Rome and it is now generally accepted that there

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carried along by the idea of the "pentarchy" of patriarchs and intimately bound up with imperial supremacy in ecclesiastical questions, and the new Roman idea, characterized by a strongly emphasized consciousness of the primacy of the *Sedes Romana.* The proponents of these ideas were two personalities, Photios and Nicholas I, neither of whom measured up to the high demands of his pastoral office, since neither felt himself to be nor acted as the *servus servorum Dei'.* H. G. Beck, op. cit., 189.

[147] D. Obolensky, *The Byzantine Commonwealth* (London 1971), 103, 119.

[148] N. G. Wilson, *Scholars of Byzantium* (Baltimore 1983), 89.

[149] There is a large literature on this point, and many now believe that this Fourth Council of Constantinople of 869/870, which condemned Photios, should no longer be regarded as a general council of the Catholic Church. There is sound evidence to show that it was abrogated by Pope John VIII in the *Comminitorium* that he sent to Constantinople in 879. See F. Dvornik in *The Photian Schism* (Cambridge 1948), 159–201. F. Dvornik, *Byzantium and the Roman Primacy* (New York 1966), 101–123. J. A. G. Hergenröther, *Photios, Patriarch von Konstantinopel. Sein Leben, seine Schriften und das griechische Schisma.* 3 vols. (Regensburg 1867–69). John L. Boojamra thinks that these two works represent a 'tendentious effort of Roman Catholic historians to protect papal prestige and at the same time rehabilitate Photios in the interest of modern ecumenism'. See J. L. Boojamra, 'The Photian Synod of 878–879 and the Papal Commonitorium (879)', *Byzantine Studies* 9 (1982), 1–23. J. Meijer, 'A Successful Council of Union: A Theological Analysis of the Photian Synod of 879–880, *Analecta Vlatadon* 23 (Thessaloniki: Patristics Institute, 1975). This is an important study that deserves serious attention. See also D. Stiernon, *Storia dei Concili Ecumenici V. Costantinopoli IV* (Vatican 1998); the 'Aggiornamento Bibliographico' added to Stiernon's book by M. G. Fornaci is very useful. See Stiernon, op. cit., 319–323.

was no second Photian schism.[150] The acts of the council of 869 include expressions of severe criticism of Photios: 'through the folly, cunning and evil machinations of the wretched Photios'. 'For the wretched Photios was truly like the person who did not make God his refuge; but trusted in the abundance of his cunning and sought refuge in the vanities of his iniquities'; and so on, as well as the canons condemning Photios.[151] Continuing to include this among the acts of the councils of the Catholic Church has done much to obscure the fact that there was a reconciliation between Photios and the pope and that this perdured. Dvornik has shown that there was no second excommunication of Photios and that he died in full communion with Rome.

The ninth-century *Nomokanon* does not include the canons of the 869 council, but it does include the canons of the Council that took place in Constantinople ten years later, in 879–880. This is a most interesting council from an ecclesiological and canonical point of view. It dealt with the restoration of Photios to the patriarchal throne in Constantinople and put an end to what is commonly referred to as 'the Photian schism.'[152] It was a council of reconciliation and an important ecclesiastical event. It both rehabilitated Patriarch Photios and restored unity between Rome and Constantinople. Some Byzantine writers consider it the eighth ecumenical council in the Orthodox Church.[153] It published a statement of faith which condemned all additions to the Creed; the wording was in general terms, though its meaning was clear, and it said nothing about the theological implications of the *filioque*. The *filioque* had been introduced into the Creed towards the beginning of the ninth century by the Frankish church, but it was only much later, in the eleventh century, that this Frankish influence made itself felt in Rome.[154]

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[150] See F. Dvornik, *The Photian Schism* (Cambridge 1948), 175ff. J. M. Hussey, *The Orthodox Church in the Byzantine Empire*, 83–86.

[151] DEC, vol. I, 163–165.

[152] For the *acta*, see Mansi, vol. 17, 468–473.

[153] John L. Boomjara, op. cit., 23: 'Beyond its immediate decisions regarding Photios and the restoration of peace within the Byzantine Church and between the Churches of Rome and Constantinople, the affirmation of mutuality and equality in customary and disciplinary procedures may prove to be an ecumenical reference point from which to begin a serious ecumenical dialogue'. See Johan Meijer, *A Successful Council of Union.* In an appendix Meijer gives the Greek version of the letters of Pope John VIII to the Emperors, to Photios ('to Photios, most holy brother and concelebrant, Patriarch of Constantinople'), to the bishops of Constantinople and the other patriarchates of Jerusalem, Antioch and Alexandria. He includes the *Commonitorium* of John VIII, the letter of Pope John to the Ignatians, the *Horos* of 879–880, and the canons of the synod.

[154] The reference here is to the Nicene Creed: 'We believe in the Holy Spirit, the Lord, the giver of life, who proceeds from the Father *and the Son*'. The phrase *filioque* was added to the Nicene Creed at a Spanish council in Toledo in 589. This was intended to underline the divinity of the Son and had support in the teaching of St Augustine. For a clear and well-documented study of the Trinitarian controversy, see R. Haugh, *Photios and the Carolingians. The Trinitarian Controversy* (Massachussetts 1975). The Frankish missionaries used this interpolated Creed in the ninth century. This was unacceptable to many Eastern Christians, both because it was an insertion into

The Council of 879–880 promulgated three disciplinary canons. The second of these concerns problems that could arise if a bishop becomes a monk, while the third stipulates the penalty for striking a bishop. It is the first canon that is particularly interesting insofar as it concerns the relationship that should exist between Rome and Constantinople and between the patriarchates generally. In this canon the council decreed that there should be mutual respect between the patriarchates in disciplinary matters. It stipulated that anyone excommunicated or censured by Rome and within the territory of the Roman Church would be considered excommunicated or censured likewise by the Church of Constantinople. In like manner, anyone excommunicated or censured by the Church of Constantinople and within its territory would be so considered by the Church of Rome. While this mutuality was formulated as a canon, the council affirmed at the same time that the privileges of the bishop of Rome would be maintained: 'there is certainly to be no innovation with regard to the privileges of the most holy Church of the Romans and its bishop neither now or in the future'.[155] In this context it is interesting to consider the Photian law book, the *eisagoge,* in which the rights and duties of the patriarch of Constantinople are delineated. It has been convincingly argued that the *eisagoge* was promulgated between 879 and 883, and more probably in or around 880.[156] Photios had been recalled from banishment and had, for the second time, ascended the patriarchal throne. His position had been confirmed by an ecumenical council and the previous canons condemning him had been abrogated. He had reached the apex of his ecclesiastical career. So he was in a strong position to have a hand in the drawing up of the *eisagoge,* and having it promulgated, with its clear delineation of patriarchal rights and duties. The first canon of the council reflects the position of the patriarch as set forth in the second title of the *eisagoge* and this strongly suggests that they were promulgated around the same time.[157]

It has been argued that one can see two different ecclesiologies at work in the two councils, the council held in 869 that condemned Photios and the pro-Photian council of ten years later.[158] It is proposed that the council of 869–870

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the Creed and because they considered that it entailed an unsound theology of the Holy Trinity. The expression was not introduced into the Creed in Rome until the eleventh century, and this was at the insistence of the Saxon emperors. See R. G. Heath, 'The Western Schism of the Franks and the *Filioque*', *Journal of Ecclesiastical History,* 23 (1972), 97–113. It continues to be a serious difficulty for Orthodox Christians. For an official clarification of the Catholic Church's teaching on the *filioque,* see the document published in September 1995 by the Pontifical Council for the Promotion of Christian Unity. See 'Greek and Latin Traditions Regarding the Procession of the Holy Spirit', *Eastern Churches Journal,* vol. 2 no. 3 (1995), 35–46.

[155] 'privilegiis sanctissimae Romanorum Ecclesiae sedi, et ejus antistiti , nihil penitus innovatis nec nunc nec in posterum'. Mansi, vol. 17, 498. RP, vol. II, 705.

[156] T. E. van Bochove, *To Date and Not to Date*, 7–27.

[157] T. E. van Bochove, *To Date and Not to Date*, 25.

[158] P. Stephanou, 'Deux conciles, deux ecclésiologies? Les conciles de Constantinople en 869 et en 879', *Orientalia Christiana Periodica,* 39 (1973), 363–407.

was one that clearly illustrated an ecclesiology in which the supreme jurisdiction of the bishop of Rome was recognized and accepted by all, whereas the pro-Photian council of 879–880 did not display such warm acceptance of papal supremacy of jurisdiction. Stephanou is correct in discerning two ecclesiologies, but the two approaches to church administration can be seen at both of these councils: the ecclesiology of the bishop of Rome, with his claim to papal supremacy, and the more 'collegial' ecclesiology of the other four patriarchs and their bishops. Both can be seen at both councils. The difference of outlook is plain in the acts and in the canons of the Council of 879, but it can also be seen in the acts and canons of the earlier council.

Two councils, two ecclesiologies? There were certainly different approaches to church government. Each system developed within and in reaction to its own political and cultural environment and these differed from each other in many ways. One has to realize also that there are widely divergent perspectives between the Eastern and the Western traditions. The traditions have evolved within frameworks of thought that are very different from each other, different mentalities.[159] Moreover, with reference to the ninth century, even in circumstances of difficulty and misunderstanding, it was possible to have and to encourage what can, in some important ways, be considered a missionary enterprise, blessed both by the Church of Constantinople in the person of her patriarch, Photios, and by the Church of Rome in the persons of two popes, Hadrian II and John VIII. I am referring to the mission to Greater Moravia by the two Greeks from Thessaloniki who are now considered the Apostles of the Slavs, Saints Cyril and Methodios. This is the subject of the next chapter.

[159] For example, concerning marriage: 'Thus the ever-increasing difference between the two conceptions is visible: the Eastern tradition tending to relate everything to the mystery and the Scriptures (while necessarily interpreting Matthew 19:9 broadly), and the West on the contrary fixing its attention on another aspect and ultimately terminating in the consideration of the contractual element as the basis on which grace has come to be conferred.' O. Rousseau, 'Divorce and Remarriage: East and West', 61.

CHAPTER THREE

St Methodios the Canonist: The Greek Origin of Slavonic Canon Law

In this chapter I continue the examination of canon law in the ninth century and discuss the life and work of a Greek canonist from Constantinople, St Methodios, who died in 885. There are several reasons for including Methodios in a canonical survey of developments in Rome and in Constantinople. First of all, as the author of the oldest juridical texts in Old Slavonic, Methodios made a significant contribution to the development of canon law in the world of the Slavs. Secondly, the mission of the two brothers, Cyril and Methodios, sent to Greater Moravia[1] from Constantinople by the emperor, Michael III, and the patriarch, Photios, and then given further support by the bishop of Rome is an interesting instance of what can, in some ways, be seen as a mission which had the blessing both of Rome and of Constantinople in the ninth century and in the time of Photios.[2]

The two brothers, Methodios and Cyril, were born into a well-to-do family in Greece. They were born in northern Greece, in what is now known as Thessaloniki, which in the ninth century was an important centre of commercial and political life in the Byzantine Empire. (Thessaloniki also had a Slav name – Solun – since it was situated on the frontier of the Slav territories). Their father was a high-ranking official in the imperial administration, – a *drungarios* – and on good terms with the imperial court at Constantinople.[3] Methodios (815–885) was the elder of the two brothers, and it is not known for certain what his baptismal name was, perhaps Michael; Methodios was the name he later took when he became a monk, and it is as Methodios that he is generally known. He studied jurisprudence and followed his father into the imperial administrative service. While still very young, he was appointed archon or prefect of a province of the empire, probably near the frontier with Bulgaria, where many Slavs lived. In this capacity he would have been familiar with the concise summary of Byzan-

[1] Greater Moravia included what we know today as the Czech Republic, along with Slovakia and part of present-day Hungary.

[2] 'Yet', as Professor Zernov observed, 'this great missionary enterprise helped to increase the hostility between East and West, although at first it was jointly sponsored by Rome and Constantinople'. N. Zernov, *Eastern Christendom* (London 1961), 91.

[3] The father of Cyril and Methodios would have enjoyed considerable influence in Thessaloniki because of his position. On the social status of an army *drungarios* in ninth-century Constantinople, see I. Ševčenko, 'On the Social Background of Cyril and Methodios'. *Byzantium and the Slavs* (Naples 1991), 479–492. As the sons of such a father, Cyril and Methodios would have been given a good start in life.

tine law – the *Ecloga* – which, as we shall see, he would make use of later when he was in Moravia.[4] However, he did not remain in the imperial service for long. He may have grown weary of the religious and political squabbling that was going on – difficulties about iconoclasm were still causing trouble – and he decided to go into a monastery. Around the year 855 he became a monk on Mt Olympus in Bithynia, in Asia Minor. It is said that both the patriarch and the emperor wanted him to accept a bishopric, but he declined. He was appointed *higumenos* (superior) of the monastery.

His younger brother, Cyril,[5] was more given to the study of literature and philosophy than his older brother and was exceptionally gifted for such study. He was also a very religious young man. He was sent to do his studies in the Imperial University in Constantinople, where he is said to have had Photios as his professor of dialectics and philosophy.[6] He showed great talent and made such brilliant progress in his studies that he was called 'the Philosopher' – a nickname that stuck to him ever after.[7] This would have been in the early forties of the ninth century, and so some time before Photios was named Patriarch of Constantinople (858). An important figure in Cyril's early life was Theoktistos, a high-ranking official in the imperial court, who was an influential adviser to the Empress Theodora when she was acting as regent for her son, Michael III, from 842 to 856. In fact, at the age of fourteen, when his father died, Cyril moved into the house of Theoktistos. So as a youth he was moving in the highest society in Constantinople. He became well known for his ability and erudition and was given important appointments. Under Patriarch Ignatios (847–858; 867–877) Cyril was appointed *Chartophylax* of Hagia Sophia, an important post in the patriarchal council.[8] Soon Cyril also decided to become a monk; and around the year 849 he went off to a monastery on the Bosphorus. However, he

[4] The *Ecloga* was issued towards the middle of the eighth century by the emperors, Leo III and Constantine V. It is a precise compilation of Justinian's law, presenting in eighteen titles the most important laws for everyday life. The earliest known legal collection in Slavonic, the *Zakon Sudnyj Ljudem,* is based on Title XVII of the *Ecloga* and, as we shall see, there are sound reasons for attributing this version to Methodios.

[5] His baptismal name was Constantine; Cyril was the monastic name he took shortly before he died in 869. Since it was as Cyril that he later became generally known, this is the name I will use throughout this chapter.

[6] This has been disputed. See P. Lemerle, *Byzantine Humanism: The First Phase* (Canberra 1986), 185–191.

[7] For a discussion of what Cyril studied at this time in Constantinople, see I. Ševčenko, op. cit., 93–106. Ševčenko discusses the influence of Photios on Cyril's philosophical studies and concludes that 'From his university years on, St Cyril belonged to the "intellectual" strain in the Byzantine milieu of the ninth century. He was a Christian philosopher-scholar, not a "philosopher" of the monkish ascetic kind'. op. cit., 106. In this Ševčenko is in disagreement with the Slovenian scholar, F.Grivec, who sees in Cyril a philosopher after the fashion of the early Fathers, who identify asceticism, sanctity and philosophy.

[8] The *Chartophylax* (Χαρτοφύλαξ) was head of the patriarchal secretariate and principal assistant to the patriarch.

was soon prevailed upon to return to Constantinople and be a teacher of philosophy.[9] He was asked to take part in a number of diplomatic missions to other countries – to the Saracen court at Samarra, in 851, where the Caliph had transferred his court from Baghdad in 836,[10] and later to the Khazars in the Crimea, to ensure the friendship of the Khazars against a possible invasion of Constantinople by the Russians from the north. On this mission he was accompanied by his brother Methodios.[11] After the coup d'état in 856 and the death of Theoktistos, Cyril, like his brother, retired to the monastery on Mount Olympus. In 862 there arrived in Constantinople envoys from Prince Rastislav, the ruler of Moravia (846–869). The envoys told the emperor and the patriarch that their ruler wanted a group of Christian missionaries who could speak Slavonic so that they could provide for the religious instruction of his people, who were in large part already Christian.[12] The Moravian appeal to Byzantium for a Christian mission in the Slav language could have been a reaction to the Frankish attempt to force the Latin language upon them.[13] The request of Rastislav turned out to be decisive for the future of the two brothers, Cyril and Methodios.[14]

The brothers from Thessaloniki were obvious candidates for the mission. The fact that they had already served together on important missions abroad would have indicated their suitability for this new mission. There was another, perhaps decisive, factor: they were from Thessaloniki, and it may be that both Cyril and Methodios had learned Slavonic as children, since Thessaloniki was a Byzantine province peopled by numerous Slav-speaking Macedonians. So the

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[9] See Giuseppe Olšr, 'La vita e l'opera dei SS. Cirillo e Metodio', *Cirillo e Metodio, i Santi Apostoli degli Slavi* (Rome 1963), 33–34.

[10] Samarra was about one hundred kilometres north-east of Baghdad.

[11] See *Vita Constantini,* chapter 8. The Khazars, usually referred to as Tourkoi by the Byzantines, inhabited the northern Caucasus. On the mission of Cyril and Methodios to the Khazars in 860, see D. Obolensky, 'The Empire and its Northern Neighbours, 565–1018'. *The Cambridge Medieval History,* vol. IV, Part I (Cambridge 1960), 492ff. Also A. N. Tachiaos, *Cyril and Methodios of Thessalonica* (New York 2001), 39–53.

[12] There would, of course, have been political motives for this mission. Rastislav wanted greater independence from the growing influence of the Frankish missionaries. 'It is clear that in doing so he was moved by the awareness that the German priests working in Moravia were acting as agents of Frankish imperialism, and by the hope that a Slav-speaking clergy owing allegiance to Constantinople would help him to increase his country's cultural autonomy'. D. Obolensky, *The Byzantine Commonwealth. Eastern Europe, 500–1453* (London 1971), 136.

[13] As Professor Mayr-Harting has observed, 'Language is part of the subject of the politics of conversion, because it could be used as a symbol of political domination within the Christian liturgy'. Henry Mayr-Harting, *Two Conversions to Christianity. The Bulgarians and the Anglo-Saxons* (Reading 1994), 9–10.

[14] See *Vita Constantini,* 14, 2–4. The Slavonic life of Methodios reports the request made by the delegation from Prince Rastislav to the Emperor Michael III: 'Many Christian teachers have reached us from Italy, from Greece and from Germany, who instruct us in different ways. But we Slavs ... have no one to direct us toward the truth and instruct us in an understandable way.' *Vita Methodii*, 5, 2.

two brothers were given the mission by Emperor Michael III and Patriarch Photios to go to Greater Moravia as missionaries to the Slavs from Constantinople. This was in 863. When Michael III decided to send the two brothers on this mission to Greater Moravia, he is reported to have said to them: 'You are from Thessaloniki, and all the people from Thessaloniki speak Slavonic well.'[15]

Greater Moravia at that time was the crossroads between East and West, a state that included many Slavs. When the brothers were setting out on this mission to Moravia, they immediately realized the need to express the Gospel in the language of these people. They prepared themselves well for the task facing them. Since there was as yet no written Slavonic language, they first of all invented a Slavonic alphabet.[16] By means of this 'Glagolitic' alphabet, devised by Cyril, they translated texts of Sacred Scripture and the Greek Liturgy into Slavonic.[17] This was a momentous decision that would have far-reaching effects. As Professor Obolensky has observed:

> This first unequivocally attested Slavonic script, identified by most modern authorities as Glagolitic, was adapted to a dialect of southern Macedonia. By gradually translating into this dialect the Scriptures and liturgy of the Christian Church Cyril and Methodios created a new literary language, known as Old Church Slavonic, which became in the course of time the sacred idiom of a large section of the Slavs and the third international language of Europe.[18]

However, the missionaries immediately ran into trouble for doing this with the Frankish Latin missionaries from Germany who denounced the two brothers to Rome because they had dared to celebrate the sacred liturgy in a language other than Greek, Latin or Hebrew, generally considered to be the only 'sacred' languages. The missionary activity of the two brothers was viewed with open hostility by the Frankish clergy in Moravia. Frankish missionaries from the Carolingian Empire had been working in the Slav territories for a long time. They came from the dioceses of Aquileia, Passau, and Salzburg, and they resented the arrival of these new Greek missionaries invading their territory with their vernacular liturgy and their Slavonic literature. The old Roman provinces of

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[15] *Vita Methodii*, 8, 8, F. Dvornik (editor), *Les Légendes de Constantin e de Méthode vues de Byzance* (Prague 1933), 386.

[16] R. Browning has argued that the Slav texts which Cyril and Methodios took to Moravia in 863 are likely to have been prepared originally for use among the Slavs under Bulgarian rule. See R. Browning, *Byzantium and Bulgaria* (London 1975), 144–146.

[17] '... in the virtually unanimous belief of present-day scholars, the alphabet invented by Cyril was the Glagolitic, while the so-called Cyrillic script ... is the result of an attempt by Methodios's disciples, probably in Bulgaria, to adapt the Greek uncial writing of the ninth century to the phonetic peculiarities of the Slavonic language'. D. Obolensky, *The Byzantine Commonwealth*, 139.

[18] D. Obolensky, 'The Empire and its Northern Neighbours, 565–1018', 497.

Illyricum[19] and Pannonia[20] were claimed as territory belonging to the Western patriarchate, and ninth-century popes had insisted on this. Constantinople was aware of this claim and did not dispute it, which explains, perhaps, why no bishop was sent from Constantinople on the Cyril-Methodios mission. Moreover, when Cyril and Methodios were sent on their Slav mission, they took with them – to take to Rome – the relics thought to be those of St Clement, pope and martyr, that they had brought earlier from their mission to the Khazars in the Crimea.[21] The fact that they were allowed to take these venerable relics with them from Constantinople in 863 is an indication that the mission of the two brothers was not expected to encounter difficulties in Rome over the new Slav Christians. So there seems to have been no intention in Constantinople of ignoring the canonical jurisdiction of Rome in Illyricum. When, some years later, Pope Hadrian II put Methodios in charge of all the Slav regions, he did so, 'on behalf of God and of St Peter the Apostle'. Later, in another letter, Hadrian II, on the occasion of Methodios' second mission, wrote: 'Our brother Methodios is holy and orthodox, has carried out an apostolic mission, and in his hands are all the Slav regions on behalf of God and the Apostolic See'.[22]

After a few years in Moravia the two brothers wanted to have some of their disciples ordained. They travelled to Venice where they discussed their novel missionary methods with the Latin clergy there. Cyril's biographer tells us that in Venice, the local bishops, priests and monks fell upon Cyril 'like ravens upon a falcon', arguing that it was permissible to celebrate the divine liturgy only in the three sacred languages: Hebrew, Greek and Latin. Cyril did not accept this and argued forcefully that God could be praised in any language. His point would be taken up later and confirmed in Rome. While they were in Venice they were invited by Pope Nicholas I (858–867)[23] to come to Rome. So in the winter of 867–868, they set out for Rome.

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[19] Ancient Illyricum was the coastal district east of the Adriatic Sea, more or less modern Slovenia, Croatia, Bosnia and Serbia, that is, the area between northen Macedonia and the Frankish Empire.

[20] The region north of Illyricum and south of the Danube, equivalent to modern Western Hungary.

[21] According to the *Vita Constantini*, 8, 43, Cyril discovered the relics of Pope St Clement who, according to tradition, had been banished in the reign of Trajan, to the Crimea, where he was martyred by being thrown into the Black Sea.

[22] *Vita Methodii*, 8, 2, quoted in Vittorio Peri, 'Il mandato missionario e canonico di Metodio e l'ingresso della lingua slava nella liturgia'. *Lo Scambio Fraterno tra le Chiese* (Vatican 1993), 254.

[23] Pope Nicholas I (858–867) is sometimes referred to as Pope Nicholas the Great. His invitation to Cyril and Methodios to come to Rome is rather ironic since one of the main events of his pontificate was his struggle with the Church of Constantinople over the appointment of Photios as patriarch. In fact, in 867 Photios had convoked a synod in Constantinople which declared Pope Nicholas excommunicated and deposed. 'In one of his last letters Nicholas bitterly bemoaned the Greek attitude to the Roman Church; but the need for a united western front against Constan-

The support that the Cyril-Methodios mission received from Rome did not spring from purely ecumenical motives. It is important to see their mission against the ecclesiastical political situation in the second half of the ninth century. The two decades between 860 and 880 constitute a most turbulent period both within Constantinople itself and in the relationship between Constantinople and the Carolingians. Constantinople was still going through the traumatic aftermath of iconoclasm when the Church was deeply divided over how the ex-iconoclasts should be treated. It was this that lay behind the division between the supporters of Patriarch Ignatios and Patriarch Photios.[24] In Rome, the young Pope, Nicholas I (858–867), was one of the most forceful of the ninth-century popes with a very clear and firm idea about the Roman primacy of jurisdiction. He had an exalted vision of the papal office and one that seemed to coincide with the one we have already seen indicated in the False Decretals.[25] He had already put this vision to the test in his confrontation with Archbishop John of Ravenna and with Archbishop Hincmar of Rheims and had forced both of these prelates to yield. Pope Nicholas felt he had the same jurisdiction over the Greek Church, a view that was not shared by Patriarch Photios or by Emperor Michael III in Constantinople. The correspondence between Michael III and Pope Nicholas provides a vivid illustration of two conflicting ecclesiologies. Ever since the iconoclast controversy and the creation of the Carolingian empire relations between Constantinople and Rome had not been good. The excommunication of Photios by Pope Nicholas in 867 brought the crisis to a head. When Michael III sent a strong protest to the pope, rejecting his interference in internal matters of the Greek Church, Nicholas replied with a bitter attack on the Greek Church and its history of heresy and schism. Photios' response was to call a synod at Constantinople in 867 in which he excommunicated Pope Nicholas. However, the news of this excommunication never reached Nicholas who died later that year.

Another factor that complicated the situation was the recently-formed church in Bulgaria. In 866, Boris, the Tsar of Bulgaria, disappointed with the refusal of Constantinople to grant him a separate Bulgarian hierarchy under a Bulgarian patriarch, sent an embassy to Rome asking Pope Nicholas I for a patriarch. For Nicholas this seemed a golden opportunity to subject the Bulgarian Church to Rome. He immediately dispatched a delegation to Bulgaria with a reasoned reply to a series of questions that Boris had put to him and agreeing to appoint

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tinople at least brought about a reconciliation with Hincmar. Such was the formal beginning of the Photian schism, which, even when it was solved [at the Council of Constantinople in 879] left a bitter memory and played its part in the permanent division between the eastern and the western churches'. Raymond Davis, *The Lives of the Ninth-Century Popes* (Liverpool 1995), 202.

[24] For a clear and impartial account of the iconoclast crisis, see M. Angold, *Byzantium. The Bridge from Antiquity to the Middle Ages* (London 2001), 70–95.

[25] See E. Duffy, *Saints and Sinners* (Yale 1997), 80–82.

an archbishop for Bulgaria.[26] It was in these circumstances that Nicholas summoned Cyril and Methodios to Rome. He would have seen their mission in Moravia as a golden opportunity to regain Roman control over the whole of Illyricum. Nor should the power of the Frankish missionaries be underestimated. The Frankish Church was strong in the region and the popes were intent on controlling their power. This was an added reason for the pope's interest in the Moravian mission of Cyril and Methodios and his desire that this be kept under the firm control of Rome. However, Pope Nicholas I died in November 867, so when the two brothers and their entourage reached Rome it was the new pope, Hadrian II, who received them. Although a much older man than his predecessor and not so forceful a personality, Hadrian was in complete agreement with Nicholas's policies. He received the missionaries cordially, gave his approval to their missionary methods, and by a special bull solemnly authorised the use of Slavonic in the liturgy.[27]

Cyril fell ill and died in Rome in a Greek monastery on 14 February, 869 at only 42 years of age. He was given a nine-day mourning period and his body was placed in St Peter's in a sarcophagus that Pope Hadrian II had prepared for himself. He was given a solemn burial in the Church of San Clemente where his shrine is to this day a place of pilgrimage for Slav Christians.[28] Methodios returned to Moravia with the blessing of the pope. A few months later he was back in Rome. He was ordained bishop by Pope Hadrian II and appointed archbishop for the territory of the ancient diocese of Pannonia and named papal legate for all the Slav peoples in that region. He was given the ecclesiastical title of the restored episcopal see of Sirmium.[29] His return to Moravia was not welcomed by the Latin bishops from the Frankish Empire. In fact, while the two brothers were in Rome, Rastislav's nephew, Prince Sventopulk, seized power, and so when Methodios returned to Pannonia from Rome as archbishop, he no

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[26] For an account of the Tsar Boris's dealings with Constantinople and with Rome, see J. V. A. Fine, *The Early Medieval Balkans. A Critical Survey from the Sixth to the Late Twelfth Century* (Ann Arbor 1983), 113–131. D. Obolensky, *Byzantium and the Slavs*, 44–48.

[27] The pope's bull of 870 stated: 'Pay respect, however, to this custom: that at Mass first of all the Apostle and the Gospel are to be read in the *romaica* language (that is, in Latin or Greek) and then in Slavonic'. *Vita Methodii*, 7, 13, quoted in V. Peri, *Lo Scambio Fraterno tra le Chiese*, 306. See also MMFH, vol. 3, 168–199.

[28] There is no certainty on where exactly in San Clemente Cyril was buried. See L. E. Boyle, 'The Site of the Tomb of St Cyril in the Lower Basilica of San Clemente, Rome'. *Christianity among the Slavs. The Heritage of Saints Cyril and Methodios* (Rome 1988), 75–82.

[29] The juridical status of Methodios is made clear in the famous letter of Pope Hadrian II, *Gloria in excelsis Deo* – of which only a translation in Old Slavonic is extant – which announces the reconstitution of a special ecclesiastical province. See MMFH, vol. 2, 147–150. Pope Hadrian II was hoping in this way to link the Slavs of central Europe more closely to Rome. He was particularly anxious to do so, since that very year Boris of Bulgaria had returned to the jurisdiction of Constantinople and had expelled the Roman clergy from his country. See D. Obolensky, 'The Empire and its Northern Neighbours, 565–1018', 500.

longer enjoyed the protection of Prince Rastislav. He was arrested by the Carolingian bishops, tried and found guilty of contravening canon law in usurping episcopal rights in another's territory. He was imprisoned in a monastery in Germany for two and a half years. It was only through the personal and persistent intervention of Pope John VIII (872–882) with the Frankish King that he was eventually released and allowed to continue with his mission.

Opposition continued and in 880 he was recalled to Rome to present the whole question once again to Pope John VIII.[30] The political situation has to be borne in mind. The new Moravian ruler, Sventopulk, began to depend increasingly on the support of the Frankish clergy and had no further use for the pro-Byzantine policy of his predecessor, Rastislav. The Frankish clergy, in their turn, did everything they could to discredit and undermine the authority of Methodios. They resented his archiepiscopal authority and his trespassing on their territory and they delated him to Rome for heresy on two counts: the first was that Methodios recited the Creed without adding the *filioque*, and that he even defended this omission. Secondly, he was accused of heresy because he celebrated the sacred liturgy in a language other than the three languages that alone were permitted by apostolic tradition: Hebrew, Greek and Latin.[31] The introduction of a 'barbarous' language into the celebration of the sacred mysteries and into the public cult of the Church, it was alleged, clearly ran counter to the faith. So, yet again, in 880, Methodios was summoned to Rome to defend his good name.

In Rome, absolved of all the accusations, he obtained from Pope John VIII the publication of the bull *Industriae Tuae*[32] which restored some of the prerogatives granted to the liturgy in Slavonic by Pope John's predecessor, Hadrian II. In *Industriae Tuae*, Pope John VIII cleared Methodios of all charges of heresy. He said he found him 'orthodox in all ecclesiastical doctrines and usages', – 'in omnibus ecclesiasticis doctrinis et utilitatibus orthodoxum'. He also vindicated the liturgical use of the vernacular as firmly as Cyril had done in Venice:

> It is certainly not against faith or doctrine to sing the Mass in the Slavonic language, or to read the Holy Gospel or the divine lessons of the Old and New Testaments well translated and interpreted, or to chant the other offices of the Hours, for He who made the three principal languages, He-

[30] For the text of the letter of Pope John VIII summoning Methodios to Rome, see PL, vol. 126, col. 850.

[31] This traditionalist 'trilinguistic' ideology was shared by many at that time both in the West and in Constantinople. Cyril had in fact experienced some opposition in Constantinople, but he had obtained the approval of Patriarch Photios to translate the liturgical books into Old Slavonic. The idea that God could only be praised in those three 'sacred' languages was condemned by Pope Hadrian II in his letter to Methodios. See V. Peri, *Lo Scambio Fraterno tra le Chiese*, 259.

[32] See MMFH, vol. 3, 197–208.

> brew, Greek and Latin, also created all the others for his own praise and glory.

However, what Pope John VIII granted was a very limited permission for the use of Slavonic in the liturgy of the Word. While it was true to declare that God could be praised in all languages, nevertheless Rome did not yet think it expedient to allow an unlimited use of the vernacular in the sacred liturgy:

> We command, however, that in all the churches in your territory, to show greater honour, the Gospel is to be read in Latin; after this it may be proclaimed translated into Slavonic for those who do not understand Latin, as seems to be done in some churches.[33]

So it was a very restricted permission. Professor Obolensky thought that this was to be the last papal prouncement in medieval times in favour of the Slavonic liturgy and that it had been banned by the successors of John VIII. This is not quite accurate, and there has been a lot of confusion on this point. It is true that among the first books translated by Cyril and Methodios was the Divine Liturgy of St John Chrysostom. This was, in the first place, for the instruction of the faithful. It is probably true that it was also immediately used for the celebration of the divine liturgy. It may even be the case that Methodios himself used this version. However, if one studies the papal letters carefully, from Pope Hadrian II, John VIII and Stephen V, it is clear that none of them actually gave permission for the unlimited use of Slavonic in the liturgy. They permitted Slavonic to be used but only for the liturgy of the Word – for the readings and for the homily, but not for the whole of the liturgy. This is also true of the letter that Pope Stephen V wrote in 885:

> However, in no way may anyone presume to celebrate in Slavonic the divine office, the sacred mysteries and the solemnity of the Mass. For we forbid this with our own apostolic authority and that of God, under pain of excommunication, except that, in so far as the edification of the simple and the unlearned are concerned, the explanation of the Gospel and of the Apostle may be given in Slavonic by learned men. And we grant and exhort and instruct you that this be done very often, so that every tongue may confess to God and sing his praise (See Ps. 117:1; Phil. 2:11).[34]

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[33] 'Iubemus tamen, ut in omnibus ecclesiis terrae vestrae propter maiorem honorificentiam Evangelium Latine legatur et postmodum Sclavinica lingua translatum in auribus populi Latina verba non intelligentis adnuntietur, sicut in quibusdam ecclesiis fieri videtur'. *Industriae tuae, Monumenta Germaniae Historica, Epist.* VII, 357–358; quoted in V. Peri, *Lo Scambio Fraterno tra le Chiese*, 308.

[34] 'Divina autem officia et sacra mysteria ac missarum sollemnia ... Sclavorum lingua celebrare ... nullo modo a quolibet praesumatur. Dei namque nostraque apostolica auctoritate sub anathematis vinculo interdicimus, excepto quod ad simplicis populi et non intelligentis aedifica-

It is clear then that even Pope Stephen V permitted a very limited concession for use of Slavonic and only in the Liturgy of the Word. Rome then went on to pursue a policy of centralization and linguistic uniformity in the liturgy and finally succeeded in uprooting completely all traces of the Slavonic tradition in Czech lands, though it took several centuries to do so.[35]

In or about the year 882 Methodios returned to Constantinople at the invitation of the emperor, Basil I. He was received with honour and obtained recognition of his perfect orthodoxy from the Byzantine emperor and Patriarch Photios, who was in his second period as patriarch and once more in full communion with Rome. As we have seen in the previous chapter, peace between Rome and Constantinople had been restored at the Council of Constantinople of 879/80. His biographer tells us that Methodios 'was warmly received by the emperor Basil I and Patriarch Photios, and that before returning to his Moravian diocese he left behind in Constantinople two of his disciples, a priest and a deacon, supplied with church books translated from Greek into Slavonic'.[36] This is an interesting comment. Did Patriarch Photios begin a school for Slavonic studies in Constantinople? The arrival in Constantinople of another group of disciples of Methodios who had been sold into slavery and redeemed in Venice by the imperial ambassador provides evidence that the authorities in Constantinople were assembling Slav-speaking priests. One can only speculate about the reasons behind this.

St Methodios devoted the last years of his life continuing his mission in Moravia and making further translations of the Sacred Scriptures, the liturgical books, the works of the Fathers of the Church and also of the collection of ecclesiastical and Byzantine civil laws called the *Nomokanon.* He died on 6 April 885 in the service of the Church established among the Slav peoples.[37] His mission had been made even more difficult because he was caught up in the political struggle between Rome and Constantinople, complicated by the Carolingian interests in the region. This is true. But prescinding from the ecclesiastical political motivation of the Roman pontiffs, their encouragement of the Slav mission under the direction of Methodios did in fact make possible the founding of

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tionem attinet, si Evangelii vel Apostoli expositio ab eruditis eadem lingua annuntietur, et largimur et exhortamur et frequentissime fiat monemus, ut omnis lingua laudet Deum et confiteatur ei (cfr. Ps 117:1; Phil 2:11)'. *Industriae tuae, Monumenta Germaniae Historica, Epist.* VII, 223–224; quoted in V. Peri, *Lo Scambio Fraterno tra le Chiese*, 306–307.

[35] See D.Obolensky, *The Byzantine Commonwealth,* 145. V. Peri has written a carefully documented study of this question in his 'Il mandato missionario e canonico di Metodio e l'ingresso della lingua slava nella liturgia'. *Lo Scambio Fraterno tra le Chiese,* 247–363. Peri argues convincingly that none of the three popes – Hadrian II, John VIII or Stephen V, – gave an unlimited permission for the use of Slavonic in the liturgy.

[36] See D. Obolensky, *The Byzantine Commonwealth,* 146.

[37] See G. Olšr, 'La vita e l'opera dei SS. Cirillo e Metodio', in *Cirillo e Metodio. I Santi Apostoli degli Slavi*, 38–39.

a Slavonic Church in Bulgaria and one that was firmly grounded in the discipline and liturgy of Constantinople rather than the Western tradition. This was to have a profound influence on the later development of the Church in Russia.

The Juridical Works of Methodios

It is in this context of the busy life of a missionary bishop in very difficult circumstances that we have to consider the work of St Methodios in the field of canon law. What claim has he to be numbered among the outstanding and influential canonists in the history of the Church? To be able to answer this question the three juridical works that are attributed to Methodios must be examined. They are the oldest juridical writings in Old Slavonic and belong to the earliest stages of Slavonic literature. They are:

1 The *Synagoge in 50 Titles* in Old Slavonic. This is sometimes referred to as the *Nomokanon* of Methodios, though it is not, strictly speaking, a *Nomokanon*, since it contains only church laws and no imperial constitutions.
2 Law for Judging the People – *'Zakon Sudnyj Ljudem'*.
This is a legal collection in Old Slavonic consisting of thirty chapters dealing primarily with penal law. It is based on Title XVII of the *Ecloga* (ἐκλογή – a selection),[38] a concise Byzantine compilation promulgated by the emperors Leo III and Constantine V in the first half of the eighth century. The *Zakon Sudnyj Ljudem* is the earliest known Slavonic legal collection and is now generally attributed to Cyril and Methodios.
3 The third legal work attributed to Methodios is what is generally called The *Anonymous Homily* in the Cloz MS, which is an exhortation to judges and a defence of church prescriptions concerning marriage.

The Slavonic Version of the *Synagoge*

Towards the end of the Life of Methodios, he is said to have translated the *Nomokanon* into Slavonic.[39] Which canonical collection did Methodios choose for the Slavonic church? There were a number of Greek canonical collections available in the ninth century to choose from, but instead of taking the *Syntag-*

[38] The *Ecloga* was a law book issued by the emperors, Leo III and Constantine V in the first half of the eighth century (726 or 741). It presents in eighteen titles the law for everyday life. Particular attention should be paid to the innovations it introduced by a restrictive divorce law and to the penal legislation in Title XVII, the title that Methodios chose to translate into Old Slavonic. The *Ecloga* was replaced by the *Eisagoge*, promulgated around 880 in which, as has already been noted, Patriarch Photios played an important part.

[39] See MMFH, vol. 2, 160.

ma in XIV Titles or the *Nomokanon in XIV Titles*, he chose in fact the *Synagoge in Fifty Titles* of John Scholastikos.This Slavonic version is to be found in two manuscripts, one dating back to the thirteenth or fourteenth century and the other dating from the sixteenth. Both manuscripts are now in Moscow.[40] A critical edition of the Slavonic version has recently been published, based on these two manuscripts, with the Greek original and a translation into modern Czech.[41] The canonical collection in question is a Slavonic translation, or to be more precise, a version in Old Slavonic, of the sixth-century Byzantine Συναγωγὴ κανόνων ἐκκλησιαστικῶν εἰς ν' τίτλους διηρημένη of John Scholastikos that was discussed in the first chapter of this book. The version that Methodios produced is a compilation consisting of conciliar canons along with some 'canons' of St Basil. It is the earliest Slavonic collection of canons and there is now general agreement that it was composed by St Methodios at the request of the Prince Rastislav, as we read in the *Vita Methodii*.[42]

Rather than talk about a translation of the sixth century *Synagoge*, it is more accurate to say that Methodios took the canonical collection of John Scholastikos as the basis for his own Slavonic collection, omitting the civil legislation that had been added on to the *Synagoge* – the 87 extracts from the *Novellae*. He begins by giving the complete list of the councils, ecumenical and regional, indicating the number of disciplinary canons from each council. This is a straight translation from John Scholastikos' introduction to his Greek *Synagoge*. The order is the one with which we are now familiar: 85 *Canons of the Apostles*, 20 canons of Nicaea, 20 canons of Ancyra,15 canons of Neocaesarea, 24 canons of Sardica, 22 canons of Gangra, 2 canons of Antioch, 59 canons of Laodicea, 3 canons of Constantinople I, 6 canons of Ephesus, 27 canons of

[40] The thirteenth-century manuscript is from a monastery in north east Russia and is now in the Lenin Library in Moscow and is classified as *RUM 230*. The sixteenth-century manuscript is also in the Lenin Library in Moscow and is known as *JAS*. It is now generally agreed that these manuscripts are transcriptions of manuscripts that go back to the time of Methodios. See I. Žužek, *Korm čaja Kniga. Studies on the Chief Code of Russian Canon Law* (Rome 1968), 16–18.

[41] MMFH, vol. 4, 243–363. There have been many books published in recent years on the juridical works of Methodios: F. Dvornik, *Byzantine Missions among the Slavs. SS. Cyril-Constantine and Methodios* (New Jersey 1970); F. Dvornik, *Les Légendes de Constantin e de Méthode vues de Byzance* (Prague 1933) (This contains the two lives of Cyril and Methodios in a French translation. Dvornik established the reliability of the Slavonic lives. There has been a second edition in 1969); F. Grivec, *Konstantin und Methodios. Lehrer der Slaven* (Wiesbaden 1960); H. F. Schmid, *Die Nomokanon-übersetzung des Methodios. Die Sprache der kirchenslavischen Übersetzung der Synagoge des Johannes Scholasticus,* (Leipzig 1922); J. Vašica, 'Origine cyrillo-methodienne du plus ancien code slave dit *Zakon Sudnij Ljudem'. Byzantinoslavica* 12 (1951), 154–174; Charalambos K. Papastathis, *L'oeuvre legislative de la Mission Cyrillo-Méthodienne en Grande Moravie* (Thessaloniki 1978); Cyril Vasil', *Fonti Canoniche della Chiesa Bizantina-Slava nelle Eparchie di Mukačevo e Prešov a confronto con il Codex canonum Ecclesiarum Orientalium* (Rome 1996), especially 63–75; I. Žužek, 'The Determining Structure of the Slavic *Syntagma of Fifty Titles', Orientalia Christiana Periodica* 33 (1967), 139–160.

[42] See the Moravian life of St Methodios, chapter 15.

Chalcedon. Along with these conciliar canons there is mention of the 68'canons', taken from the two letters of St Basil to Bishop Amphilochius.

Then Methodios gives the list of the fifty titles, providing with each a brief summary of the contents of the title. In this part he is following closely and translating his Greek original, with only a few omissions and abbreviations.[43] There follows the main part which contains the actual canons, and it is here that the Slavonic version of Methodios diverges substantially from the Synagoge. It does not always provide an exact translation of the Greek and it is much shorter than the original. Of the 377 canons in the Greek original, 142 are simply omitted by Methodios. Nor does any particular category of canons get privileged treatment. Methodios omitted ten of the *Apostolic Canons*, twenty-two canons from the ecumenical councils, seventy canons from the regional councils and thirty-four of the canons of St Basil. The Slavonic version is about half as long as the Greek original, because many of the canons that Methodios omitted were among the longer of the Greek canons.

It would be interesting to know directly from Methodios why he made the selection that he did, but he himself has left no explanation. In fact a variety of theories have been put forward by scholars to explain why Methodios abbreviated a number of canons and omitted others. It has been proposed, for example, that behind the selection lies an ideological criterion: Methodios, it is alleged, was out to safeguard an independent Church in Greater Moravia against the imperialistic approaches both of Rome and of Constantinople. Others have argued that Methodios was simply using his authority as newly-appointed archbishop of Moravia to compile his own canonical collection, choosing only those disciplinary canons that he judged were applicable in Pannonia. Professor Sergei Troickij,[44] tried to show that there was an ecclesiastico-political ideology behind the canonistic work of St Methodios.

Troickij maintains that St Methodios was determined to establish an autonomous Church in Moravia and that he was opposed to any kind of 'papism' whether Roman or Constantinopolitan. Troickij may well be correct in his view that Methodios would have wanted to dissociate himself from the intrigues that were going on within his own Church in Constantinople at that time, as well as from the dispute that was going on between Constantinople and Rome. He is also correct in rejecting the idea that Cyril and Methodios 'were imbued with an ultramontane ideology and were loyal papists'. However, he goes beyond the evidence when he argues that Methodios was determined to establish an autonomous Church in opposition to Rome and Constantinople. The relations that Methodios continued to have both with Rome and with Con-

[43] At Title 50, for example, Methodios adds an exhortation to the bishops not to be indifferent to the importance of synods.

[44] S. Troickij, 'Apostle of the Slavs, St Methodios as canonist', *Žurnal Moskovskoj Patriarchii*, vol. 3 (1958), 38–57.

stantinople do not support such a theory, nor does the structure or the contents of the Nomokanon.

Troickij argues that the anti-papalist ideology of St Methodios can be seen in the fact that he selected the *Synagoge* of John Scholastikos – a sixth century collection – for his Slavonic translation. Further, from this Greek *Synagoge* Methodios was careful not to omit canons 'which were rejected by the Roman Church or which proscribed its errors'. Troickij also argues that Methodios omitted all the canons, which were interpreted by the popes as favouring their hegemony over the whole Church.

Ivan Žužek, published a reply to this article in which he examined Troickij's arguments.[45] I propose here simply to give the main points of Žužek's argument against Troickij. Methodios chose the *Synagoge* of John Scholastikos, argues Troickij, because he considered this particular canonical collection impartial with regard to current disputes between Rome and Constantinople in the ninth century, since it had been compiled in Antioch in the sixth century, and also, it is alleged, because it corresponded with Methodios's own ideas concerning the canonical autonomy of the local churches. However, while it is true that there were other canonical collections readily available to Methodios, if what he wanted was a short, clear and handy code for his church, then the *Synagoge* of Patriarch John Scholastikos was in fact the most suitable available. Moreover, the fact that there are many medieval Greek manuscripts of the *Synagoge* still extant shows that it was a popular collection, frequently copied right up to the end of the twelfth century. So it would have been available to Methodios in the late ninth century. Also its author had been Patriarch of Constantinople and was venerated as a saint in that city; this too would have been significant to a person with Methodios' background, who had been sent from Constantinople and was looking for a compendium of canon law to translate into Slavonic. These in themselves would have provided sufficient reason for choosing the *Synagoge* and no other arguments are needed. So the choice of the *Synagoge* in itself does not prove any ideology.

Some Catholic authors have argued that Methodios chose his canons according to a well-conceived plan and that this plan was to omit canons that would be unacceptable to Rome. In opposition to these authors, Professor Troickij argues that Methodios in fact included canons opposed by Rome, while rejecting all the ancient canons that could be interpreted as favouring Roman primatial claims. This is not true because, as we shall see, Methodios did include canons

[45] Ivan Žužek, 'The Determining Structure of the Slavic *Synagoge of Fifty Titles*'. I have not been able to consult directly Troickij's article and I have had to rely on I. Žužek's presentation of his arguments. I feel justified in doing so because Professor Troickij himself was impressed by Žužek's response to his article and wrote to him to say that, having read Žužek's article, he would have to re-examine his own proposals about the Slavonic version of John Scholastikos's *Synagoge*. See I. Žužek,'San Metodio – Canonista', in R. Taft (editor), *Christianity among the Slavs. The Heritage of Saints Cyril and Methodios* (Rome 1988), 395.

that embodied Byzantine traditions that were not in harmony with Roman discipline. Žužek, however, rejects Troickij's counter-claim that Methodios's choice of canons displays an anti-Roman bias. He examines the arguments that Troickij put forward in his attempt to demonstrate that Methodios deliberately included canons that would be opposed by Rome, and shows that these arguments do not substantiate the charge that Methodios was influenced by any particular ideology in composing his Slavonic *Synagoge*. It may be useful to remind ourselves that no Latin objections were ever raised against the *Synagoge* of John Scholastikos, either when it was first produced or later. It was acknowledged as an acceptable embodiment of Eastern Church traditions.

Of the 377 canons in John Scholastikos' compilation, only 235 were received into Methodios's collection. Why were the other 142 canons omitted? Trockiij proposed the following reasons:

1 The necessity to oppose papal claims for primacy.
2 The fact that a number of the Greek canons were similar or identical in content and therefore repetitious.
3 The fact that a number of canons had fallen into desuetude.
4 The difficulty of applying some of the Greek canons in the conditions then obtaining in ninth-century Moravia.

It is true that, with only a few exceptions, the Slavonic *Synagoge* follows a general principle which may be formulated as follows: let one or two canons suffice to make a particular point and omit the other canons that put forward more or less the same legislation. It also seems to be the case that some canons were left out because they had fallen into desuetude in the ninth century. For example, all the canons about chorepiscopi would be irrelevant in ninth-century Moravia, so they are all but one omitted by Methodios. It would also seem to be the case that Methodios omitted canons that he judged unsuitable for Moravia, though it is difficult to arrive at any final judgment on this question until the early conditions surrounding the Church in Greater Moravian are better known.

There are, however, other reasons that can be advanced for Methodios's omission of so many canons. What Methodios seems to have wanted was a compact manual of canon law in which only the most important rules of ecclesiastical discipline would be expressed. Each title from the *Synagoge* was clearly enunciated and then illustrated by a few well-chosen canons. Another reason for the omission of so many canons, reasons Žužek, is that Methodios tended to leave out long and complicated canons when there were similar but much shorter ones available, even to the extent of passing over canonical prescriptions of some importance. For instance, Title 7 has nine canons in Greek, but only four in the Slavonic *Synagoge*. All the long canons have been left out.[46]

[46] I. Žužek, 'The Determining Structure of the Slavic *Syntagma*', 157.

Žužek argues convincingly that if you attempt to make a shortened version of the *Synagoge* of John Scholastikos, applying these principles and making the appropriate omissions, then you end up with a collection of canons very similar to what Methodios in fact produced. The simplest and most satisfactory explanation is that Methodios wanted to compile a short manual of canonical legislation that would be of immediate practical use in Moravia of this time. In this way, he was able to put together a canonical collection that, while maintaining the spirit and the essentials of the original Greek collection, was free of much repetition.[47]

We have no certain knowledge of when exactly Methodios made his version of the Greek canons. According to the *Vita Methodii* the canonical compilation would have been made towards the end of his life and therefore he probably produced it in or about the year 883.[48] It is not unlikely that he took the *Synagoge* of John Scholastikos, not only because it was shorter than the Nomokanon in XIV Titles, but also because he found the structure and organization in fifty titles of the *Synagoge* more suitable for his purposes.

Some Characteristics of the *Synagoge* of Methodios

Commentators have pointed out other characteristics of the *Synagoge* of Methodios.[49] Whereas in the Greek text of John Scholastikos the inscription of each title is given in full throughout the main part of the *Synagoge*, Methodios generally abbreviates this to the opening words. He had already given in full the fifty titles in the list at the beginning of his translation, as this is to be found in the Greek original. He then selected, under an abbreviated form of each title, those canons he thought appropriate and sufficient for his purpose. Another characteristic of the Slavonic translation noted by commentators is Methodios's use of a variety of Slavonic expressions to bring out more clearly the meaning of the Greek. A few examples will illustrate this. In Title II, canon 12 of Chalcedon, on metropolitans, the Greek text has 'the rights of the metropolitan church are to be defended'; the Slavonic version has: 'the rights proper to the metropolitan church must remain untouchable/sacrosanct'. This underlining of the rights of the metropolitan may well be a reflection of the trouble that Methodios personally experienced in trying to defend the independence of his own ecclesiastical province against the Frankish missionaries. In the same title

[47] C. K. Papastathis is in agreement with Žužek. 'Méthode comme d'ailleurs toute la mission cyrillo-méthodienne en général, ont travaillé en Grande Moravie sans prendre part au conflit entre les deux Eglises. Le Nomokanon contient un droit apprové par les deux Eglises et aspire à des fins purement religieuses et pastorales, et non pas à élever ou abaisser l'une ou l'autre Eglise'. C. K. Papastathis, *L'oeuvre législative*, 138.

[48] See C. K. Papastathis, *L'oeuvre legislative*, 139.

[49] For these points I am indebted to Cyril Vasil', *Fonti Canoniche*, 70–75.

and the same canon, where the Greek text mentions imperial rescripts Methodios uses a more general term to cover all civil authorities: a bishop is to be punished if he acts contrary to the canons 'relying on the help of those in power', that is relying on the support of any civil authorities.

In Title XLV, translating the 67th canon of St Basil, where it is laid down that the penitent, after having done penance, may be admitted to receiving the Body of Christ in Communion, Methodios has: 'may be admitted to communion of the Body and Blood of Christ'. Troickij saw this as another example of the 'anti-papalism' of Methodios who in this way wanted to indicate his rejection of the Western usage of receiving communion under one species only. However, in the ninth century it was still normal practice, also in the West, for the faithful to receive communion under both species. Communion under one species only was not general in the Western Church until much later.[50]

There are other instances where changes from the Greek original were clearly made to meet the needs and circumstances of the church in Greater Moravia. In Title XV, canon 9 of Chalcedon deals with the competent forum for resolving litigation among the clergy. The Greek original has: 'If any cleric has a case to bring against a cleric, let him not leave his own bishop and take himself off to the secular courts, but let him first air the problem before his own bishop, or at least, with the permission of the bishop himself, before those whom both parties are willing to see act as arbiters of their lawsuit'.[51] The version of St Methodios reinforces the role of the bishop. His version runs: 'If a cleric has a matter against another cleric, he must not neglect his own bishop and have recourse to civil judges, but first of all he must explain his case to his bishop and the bishop must call the parties together and judge the cause justly with his priests'.

Another change worth noting can be seen in Title XLVII, in canon 11 of Sardica. In the Greek original the canon runs: 'If any of the citizens residing in the city does not come to church on three consecutive Sundays he should be excommunicated by the church'. Methodios makes two interesting changes in his version. Speaking of the obligation of the citizens who live in the city to go to church on Sunday, Methodios adds 'with their children', which can mean sons and daughters or also members of their household. Then Methodios says that the penalty for omitting this duty is not excommunication, but the penance of having to fast for three successive Sundays. The reason here is obviously pastoral. His new Christians would not really be helped by being excommunicated. These are a few examples of the sort of modifications that Methodios

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[50] See C. Vasil', op. cit., 71, n. 166. Pope Paschal II (1099–1118) expressed the attitude of Rome in this matter as follows: 'Let the Lord's tradition be kept and let no departure be made by novel human institution from what Christ the Master both commanded and practiced'. Mansi, vol. 20, col.1013B (quoted in J. J. Megivern, 'Communion under Both Species', NCE, vol. 4, 45).

[51] DEC, vol. I, 91.

made in his version of the *Synagoge*. The changes are practical and pastoral and attempt to adapt the canonical legislation to the circumstances of Greater Moravia. However, the very fact that Methodios felt that he could make changes in what were regarded as the *sacri canones* is remarkable. The conciliar canons, after all, were held to be sacrosanct, particularly in the Eastern Church. The fact that Methodios dared to make alterations in these shows a great freedom of spirit. But this is just another manifestation of the enterprising initiative that was characteristic of the whole mission in Moravia right from the start, with its invention of a new alphabet and the translation of the Greek liturgy into Slavonic.

Methodios also included those canons which provide for the distinctively Constantinopolitan discipline, even where this differed from the Latin usages. Under Title XXVII, for example, which presupposed that there would be married priests, he selects one canon, canon 5 from the *Apostolic Canons*: 'Let not a bishop, presbyter, or deacon put away his wife under pretext of religion; but if he put her away, let him be excommunicated; and if he persists, let him be deposed'.[52] He also includes the canons from St Basil concerning the exception-clause in Matthew 19.9 'And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery'.[53] While it is true that Methodios does incorporate the Greek customs into his compilation, this does not necessarily spring from any anti-Roman motives. Methodios was, after all, from Constantinople and he provided a handy synopsis of a Greek collection that was well known in Constantinople, omitting none of the fifty titles and listing the Greek sources of canon law as these are listed in John Scholastikos. He makes no mention of decretals from the bishop of Rome – even though he himself had been named papal legate and archbishop of Moravia for the Slavs by the bishop of Rome. No canons are omitted on ideological grounds.

Before concluding our discussion of the Nomokanon I think it not irrelevant at this point to refer to what is known as the *Glossa di S. Emmeriana*. A fascinating gloss has been discovered that may possibly have been directly taken from the *Synagoge* of Methodios and in the lifetime of Methodios. In 1937 Professor Bischoff discovered a Slavonic gloss in the text of a ninth-century Latin manuscript.[54] The manuscript contained the Western Church's canonical collection, the *Dionysiana*, though this particular manuscript has the later enlarged

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[52] H. R. Percival (editor), *The Seven Ecumenical Councils of the Undivided Church* (Michigan 1991), 594.

[53] Title XXIV, S. Basil, c. 9.

[54] See B. Bischoff, *Die Süddeutschen Schreibschulen und Bibliotheken in Karolingerzeit*, vol. 1, *Die bayerischen Diözesen* (Leipzig 1940). For a detailed study of the gloss, see Wilhelm Lettenbauer, 'Eine lateinische Kanonensammlung in Mähren im 9. Jahrhundert,' *Orientalia Christiana Periodica*, 18 (1952), 246–269. See C. K. Papastathis, *L'oeuvre legislative*, 50–53.

version, the *Dionysiana Hadriana ampliata.*[55] The Slavonic gloss has been added to the Latin text in the following way:

ISIKU KOMUSDO
Episcopos gentium singularum scire convenit
quis inter eos primus habeatur quem
IMETI
velut caput existiment et nihil am
BE POVOLENI
plius preter eius conscientiam gerant.

This is Dionysius' Latin translation of canon 34 of the *Apostolic Canons,*[56] but in between the lines some Slavonic words have been inserted and transliterated in Latin letters. At first sight this seemed to be a word for word translation of the Latin text, but a more careful examination has shown that the Slavonic words are taken ready-made from a Slavonic translation of the Greek version of canon 34. Also, linguistically it is an archaic form of Slavonic, corresponding to the Old Slavonic used in the time of Methodios. This suggests that the gloss dates from the time of Methodios. It has, not unreasonably, been proposed that the gloss derives from discussions in Moravia after Methodios had returned from Rome with his mission from the pope to be archbishop of the Slavs in the region. Also canon 34 of the *Apostolic Canons* was textually quoted by Pope John VIII in the bull, *Industriae tuae*, of 879, in which the pope declared to Sventopulk his approval of the missionary methods of Methodios whom he had appointed archbishop. So the pope was applying canon 34 to the situation in Moravia and to Methodios as the metropolitan archbishop of the Slavonic church in that region. It has been suggested that it is not unlikely that this gloss on a ninth-century Latin manuscript of the *Dionysiana* was added at the court of the Moravian ruler, Sventopulk, during a discussion, when the Slavonic version of canon 34 was being compared with the Latin manuscript. This means that it could go back to 880, if not earlier.

This gloss on canon 34 has another interesting aspect. Troickij, in his attempt to demonstrate that Methodios was anti-papal, says that Methodios in fact has given a correct translation of the Greek original of canon 34 of the *Apos-*

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[55] This was the *Dionysiana* as compiled by Dionysius but augmented in the eighth century by additional papal decretals. See, A. Stickler, *Historia Iuris canonici,* 50.

[56] PL, vol. 67, col. 145: 'Episcopos gentium singularum scire convenit, quis inter eos primus habeatur, quem velut caput existiment, et nihil amplius praeter ejus conscientiam gerant, quam illa sola singuli, quae parochiae propriae, et villis quae sub ea sunt, competunt, sed nec ille praeter omnium conscientiam faciat aliquid, sic enim unanimitas erit, et glorificabitur Deus per Christum in Spiritu sancto'. The Greek text in Beneševic's edition of the *Synagoge* of John Scholastikos: *Apostolic Canons,* can. 34: 'Τοὺς ἐπισκόπους ἑκάστου ἔθνους εἰδέναι χρὴ τὸν ἐν αὐτοῖς πρῶτον, καὶ ἡγεῖσθαι αὐτὸν ὡς κεφαλήν, καὶ μηδέν τι πράττειν περιττὸν ἄνευ τῆς ἐκείνου γνώμης ...' quoted in W. Lettenbauer, 'Eine lateinische Kanonensammlung', 263.

tolic Canons, whereas, according to Troickij, this canon was travestied by both Eastern and Western 'ecclesiastical imperialists' in order to exclude the autonomy of the national churches. He claimed that *Apostolic Canon* 34 lays the foundation for the constitution of the Orthodox Church, since it gives the right of independence (autocephaly) to each national Church. Every nation should constitute an autonomous Church with one of the nation's bishops as its head. But this interpretation of canon 34, continues Troickij, was never accepted either by papal Rome or by those who supported what he calls 'Constantinopolitan Papism'. He goes on to criticise Dionysius' translation – *singularum gentium* – and the *Nomokanon* that was sent to Bulgaria in the ninth century – the original of the *Efremovskaja Kormčaja*.[57] On the other hand, argues Troickij, Methodios has correctly translated the canon because he was opposed to every sort of papism.

Certainly, canon 34 is one of the most frequently quoted of the Apostolic Canons and it is one of the most ancient formulations of the collegial spirit that was expected to obtain among the bishops. But it has never been absolutely certain just what is meant here by τὸν ἐν αὐτοῖς πρῶτον, or what is the exact meaning of ἑκάστου ἔθνους or of ἄνευ τῆς ἐκείνου γνώμης. It has been argued that canon 34 of the *Apostolic Canons* and canon 9 of the Council of Antioch were both understood to apply to metropolitans. Here are the two canons in an English translation:

Apostolic Canons, canon 34:

> The bishops of every nation must acknowledge him who is first among them and account him as their head, and do nothing of consequence without his consent; but each may do those things only which concern his own parish, and the country places which belong to it. But neither let him (who is the first) do anything without the consent of all; for so there will be unanimity, and God will be glorified through the Lord in the Holy Spirit.[58]

Council of Antioch (341), canon 9:

> It behoves the bishops in every province to acknowledge the bishop who presides in the metropolis, and who has to take thought for the whole province; because all men of business come together from every quarter to the metropolis. Therefore it is decreed that he have precedence in rank, and that the other bishops do nothing extraordinary without him (according to the ancient canon which prevailed from [the times of] our Fathers) or such things only as pertain to their own particular parishes and the districts subject to them. For each bishop has authority over his own parish, both to

[57] This is a Bulgarian canonical collection in Slavonic based on the *Nomokanon in XIV Titles*. It probably dates from the ninth century. See I. Žužek, *Kormčaja Kniga*, 21–23.

[58] English translation is from H. R. Percival, (editor), *The Seven Ecumenical Councils of the Undivided Church*, 596, where Percival is translating the version of canon 34 that was adopted by William Beveridge in his compilation of the canons, the *Synodikon* of 1672.

> manage it with the piety which is incumbent on every one, and to make provision for the whole district which is dependent on his city; to ordain presbyters and deacons; and to settle everything with judgment. But let him undertake nothing further without the bishop of the metropolis; neither the latter without the consent of the others.'[59]

The 'ancient canon' mentioned in canon 9 of Antioch is most probably canon 34 of the Holy Apostles.[60] John Scholastikos seems to have understood these two canons as stipulating the importance of the provincial synod of bishops for all serious church business. This would explain why he places both canons in Title II of his *Synagoge*, the title that deals with metropolitans, and not under Title I, the title which deals with patriarchs. Also, as has already been indicated, this is in fact is how Pope John VIII understood this canon in his letter, *Industriae Tuae*, to Moravia explaining the position of Archbishop Methodios. This is also how canon 34 was used by Pope Nicholas I in his *Responsa ad Bulgaros,* some years earlier. He expressed his wish that the Bulgarian Christians should find a bishop 'qui si non patriarcha, certo archiepiscopus appellandus sit,' and the pope goes on to quote canon 34 of the *Apostolic Canons*.[61] It is inaccurate to say that Dionysius Exiguus altered the meaning of canon 34 by translating ἑκάστου ἔθνους as *gentium singularum*. Dionysius has given a correct translation, and Professor Troickij's attempt to prove his theory that Methodios was guided by anti-papal ideas gains nothing from the alleged 'correct' translation that Methodios made of canon 34 of the *Apostolic Canons*.

To return to the ninth-century Old Slavonic Gloss, Wilhelm Lettenbauer dates the manuscript around the middle of the ninth century from Ravenna. He is of the opinion that it contains a copy of the *Dionysiana* that was sent by Pope John VIII to Sventopulk in 880 along with St Methodios.[62] If this manuscript really goes back to the life-time of Methodios, it provides a valuable insight into the particular cultural climate in ninth-century Moravia. The gloss gives us an example of a quotation in Old Slavonic, taken from Methodios's own translation of canon 34, inserted to explain the meaning of the canon in a collection of Latin canon law, that was sent by the pope to a Slav ruler. A most interesting and unexpected meeting of the Latin *Dionysiana* and the Greek *Synagoge* of John Scholastikos in the Slavonic compilation of St Methodios.

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[59] H. R. Percival, *Seven Ecumenical Councils*, 112.

[60] This would support the view that the *Apostolic Canons* are earlier than the Council of Antioch (330/341).

[61] See *Responsa Nicolai ad Consulta Bulgarorum*, PL, vol. 119, cols 978–1016.

[62] This would imply that Methodios knew the Latin canonical compilation of Dionysius, yet chose to use his Greek collection for his Slavonic version.

Zakon sudnyj ljudem: The Penal Law for the People

We have seen that Methodios took from the *Synagoge* of John Scholastikos only the sacred canons along with some of the letters of St Basil. He did not take over the eighty-seven chapters of imperial legislation that had been appended to that collection. However, in the most authoritative manuscript containing the work of Methodios[63] and in other important manuscripts, immediately after his Slavonic *Synagoge*, there follows a Slavonic collection of civil laws known as the *Zakon sudnyj ljudem* – 'judicial law for the people'.[64] Scholars are agreed that in this short collection we have the earliest collection of civil law in Old Slavonic. It is not an original compilation. The source of the *Zakon* was the *Ecloga*, the ninth-century Byzantine code of law that was in force in the time of Methodios. It had been promulgated in 741 by the iconoclast emperors, Leo III (717–741) and Constantine V (741–775). The *Ecloga* claimed to be a revision of the Justinianic law of the *Corpus Iuris Civilis* undertaken in the interests of greater humanity and clemency, more consonant with Christian principles. The penal system of the new code was set out in Title XVII which provides a list of the penalties prescribed for various crimes. The use of capital punishment was restricted, but a new system of punishment by mutilation was introduced: for serious cases of theft the hand was cut off, for sacrilege the penalty was blinding, for adultery cutting off the nose was prescribed, and so on. It is not easy today to harmonise such penalties with Christian morality but they were regarded then as more humanitarian than capital punishment. The *Zakon Sudnij Ljudem* is a translation and adaptation of the penal law as set out in Title XVII of the *Ecloga*. In the *Zakon* there are thirty-two articles, thirty of which are taken from the *Ecloga*; ten are straight translations from the Greek original whereas the others are modifications and adaptations. The penal sanctions have been modified. Mutilation has been substituted by ecclesiastical penances. It has been proposed that the modifications found in the collection are a result of the influence of Western penitential practice at that time. Judges are given the faculty to punish with ecclesiastical penalties as well as to modify the cruel punishments that are to be found in the original *Ecloga*.

For a long time it was thought that this was the oldest Bulgarian code of law, introduced by Tsar Boris after the conversion of Bulgaria to Christianity in 865. More recent manuscript research has, however, made this view no longer tenable. Literary, philological and terminological analysis has shown that this code belongs to the Western Slavonic linguistic tradition. Its terminology links it closely to the *Synagoge* of Methodios and to the exhortation to judges, now

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[63] The Moscow manuscript *RUM 230.*

[64] The *Zakon Sudnij ljudem* is found in several manuscripts in Moscow (dated to the thirteenth and the sixteenth century respectively). It is included in all printed editions of the *kormčaja kniga*, the Russian canon law collection. See Ivan Žužek, *Kormčaja Kniga*, 18–20.

known as *The Anonymous Homily of Cloz*. It is now generally agreed that this work – at least, in its most ancient form, – has its origin in the Cyril-Methodios mission to Moravia.[65]

J. Vašica, arguing from the *Vita Constantini*,[66] proposes Cyril as the author. In this life, which dates back to the ninth century, there is mentioned a request by Duke Rastislav for a 'good law'. The *Zakon Sudnyj Ljudem* would have partly met such a request. Cyril's name (as Constantine) is in fact mentioned in the prologue to the Code. According to this theory, the law-collection would have been made for civil tribunals of Greater Moravia at the request of Duke Rastislav. Another theory has been proposed by F. Dvornik. He has proposed that the collection was produced by a group of priests, disciples and collaborators of Methodios. The aim of the work would then have been to provide priests with guidance on how to deal with crimes in the light of Greek civil legislation and the penitential practice of the Church. It would also have been a proposal to civil judges to introduce Christian mercy into the civil jurisprudence. In this case the initiator of the project could easily have been St Methodios. Perhaps he himself added this collection to his *Synagoge in Fifty Titles*, producing in this way a *Nomokanon*.

A Third Juridical work of Methodios: The Anonymous Homily of the Cloz Manuscript

To conclude these reflections on the juridical activity of St Methodios another document from Moravia should be considered. This is the so-called *Anonymous Homily of the Cloz Manuscript*. The Cloz manuscript is now in the Commune Library in Trent and consists of twelve folios of a very ornate eleventh-century manuscript which was copied from a much earlier Glagolithic text from Macedonia.[67] It contains five homilies: two of St John Chrysostom, one attributed to St Athanasius, the beginning of a homily by St Epiphanius, and one that has been called *The Anonymous Homily*.

In the judgement of modern scholars, relying on philological and historical criteria, this anonymous homily should be placed among the works of Methodios.[68] It is an exhortation addressed to judges and its content is closely

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[65] See the critical edition by N. Tichomirov and L. Mirov, *Zakon Sudnyi Ljudem* Moscow 1961; J. Vašica, 'Origine cyrillo–méthodienne du plus ancien code slave dit *Zakon Sudnyi ljudem*,' *Byzantinoslavica* 12 (1951), 154–174. C. K. Papastathis, *L'oeuvre législative*, 43–66. Also H. W. Dewey, A. M. Kleimola, *Zakon Sudnij Liudem* (Court Law for the People), (Ann Arbor 1977).

[66] *Vita Constantini*, 14, 5.

[67] Ms 2476. It is called the *Cloz* Manuscript because Baron Cloz (1777–1816) presented it to the communal library in Trent.

[68] See A.Vaillant, 'Une homélie de Méthode', *Revue des Études Slaves* 23 (1947), 34–47. Also C. H. Papastathis, *L'oeuvre législative*, 17–19; C. Vasil', *Fonti Canoniche*, 73.

related to the collection of penal law that we have just been considering, the *Zakon Sudnyj Ljudem*. It is a short homily of only five pages, but it has importance for us because it provides an example of how in practice Methodios interpreted the law. Archbishop Methodios, legislator and organizer of the Slav Church in Moravia, shows how he understood the law and how he thought it should be applied. It is addressed to the prince and to local judges. The fact that Methodios is here advising judges how to deal with the infringements of matrimonial law and to apply ecclesiastical penalties where necessary, implies that ecclesiastical courts were not yet established in Moravia. Therefore the civil courts had the right and duty to apply ecclesiastical penalties and follow canonical prescriptions. It is clearly concerned with people recently converted to Christianity and who still follow some of their old pagan customs.

It is an exhortation to love justice and to be impartial in investigating every accusation. The patient hearing of witnesses is required in accordance with the law. Every civil leader is bound to teach the law of Christ, of the Apostles and of the Fathers to all who are under his authority and see that no injustice is done or pagan practices maintained. Christians should not marry non-baptised persons: there must be no union 'between light and darkness'. He also mentions the impediment of spiritual relationship arising out of baptism. Persons bound together in an illicit marriage because of this impediment must separate and do the penance laid down for those guilty of fornication.[69] There is a reference here to *Zakon Sudnyj Ljudem*, article 7a, where a penance of fifteen years is prescribed for this fault.

The next section deals with the indissolubility of marriage. The homilist quotes the Gospel of St Matthew (Mt 5:32; Mt 19:6) to show that marriage is indissoluble, and he indicates the conditions that are required to justify separation. Here too there is a reference to the law laid down in the *Zakon Sudnyj Ljudem*'s last chapter. If one compares the conditions required in the Greek *Ecloga* and derivative legislation with Slavonic practice, some differences can be seen. The *Zakon* gives a detailed list of the possible causes for a separation and stipulates that the reasons for the separation must be proved before a tribunal through the evidence of witnesses. On the question about whether or not a man can send away his wife, the homilist refers to Mt 5:32 and Mt 19:6. The Apostles and Fathers have taught us that the breaking up of a marriage is a very serious matter and have subjected this to serious investigation and fasting. 'Every Christian is bound to hold in great honour and reverence the person he has chosen, and in any eventual litigation must judge her in accordance with the

[69] The impediment of spiritual relationship was introduced into canon law by canon 53 of the Council *in Trullo* in 692. This canon lays down that the baptismal sponsors of children are not to enter into marriage with the widowed mothers of their god-children. If any persons are found doing this, they shall in the first instance desist from this unlawful marriage, and thereupon shall be subject to the penalties for those who have committed fornication.

holy law of God, as is written in the law'.[70] In the homily a distinction is made between the civil law and church law, but it is interesting to note how the observance of the 'law of God' is also entrusted to the civil judges in Moravia. Methodios even underlines the obligation that such judges have to see that the law of God is observed.

How should these three works be dated? It has been reasonably argued that the *Zakon Sudnyj Ljudem* would have been composed towards the beginning of the mission, between 863 and 866, and the *Anonymous Homily* between 873 and 879. The *Synagoge* would have come later, say between 880 and 883.[71]

Conclusion

This chapter has given an account of the beginnings of the ecclesiastical juridical activity in the Slavonic Church that was taking shape in late-ninth century Moravia. The outstanding personalities who planned and carried out this mission were men of genius and initiative, as well as saintly missionaries. The juridical/canonical part of their work was not their main task of preaching the Gospel to the people of Moravia, but it was far from insignificant. This is clear from the three juridical works that we have been discussed, two of which are certainly the work of Methodios, the third produced in his milieu in Moravia.

The way the brothers went about their missionary enterprise cannot but arouse admiration. Having decided that, to bring the Gospel to the Slavs, it was essential to present Christian teaching in their own language, they acted with extraordinary ability and speed. First of all, they invented an alphabet for the as yet unwritten Slavonic language, then they produced what are now held to be outstandingly accurate translations of the liturgy and parts of the Bible, translations that are recognised as literary and even poetic. After Cyril's early death, Methodios went on to translate texts from the Greek Fathers. He included a concise and systematic manual of canon law which, along with the Code of Penal Law, virtually constitutes a *Nomokanon* for the Slavs. The abridgments and modifications that Methodios made to the Greek *Synagoge* of John Scholastikos, going so far at times to alter the *sacri canones* themselves, are remarkable, as are the changes he made in the version of Title XVII of the *Ecloga* in order to underline the importance of Christian mercy in the work of the tribunals. The motivation behind the whole enterprise can be seen to be the pastoral aim of preaching the Gospel. So in the space of some twenty years, Cyril and Methodios had provided the new Slavonic Church in Moravia 'not only with vernacular versions of all the main ecclesiastical offices and of the Christian

[70] See *Zakon Sudnyj Ljudem*, art. 30 and art. 30a.

[71] See C. Papastathis, *L'oeuvre législative*, 139. Papastathis argues that the *Nomokanon* must be dated in 883, in conformity with what is related in the *Vita Methodii*.

Scriptures, but also with translations and adaptations of Byzantine juridical texts, religious and secular.'[72]

It was a remarkable achievement, and still more remarkable when we realize that it was carried out in the face of fierce and at times violent opposition – not from Rome or from Constantinople – but from the bishops of the Western Church and the Frankish missionaries in Moravia. In Methodios, the canonist, we have a Greek missionary, sent to Moravia by Patriarch Photios and Emperor Michael III of Constantinople, being confirmed in his mission by the bishop of Rome, ordained archbishop in Rome and sent as special papal legate for all the Slavs in the region, for whom he provided a Slavonic translation of a Greek canon law collection. Then he has to be rescued, – and by the pope, – from imprisonment at the hands of the Latin bishops from the Frankish Empire. It is an extraordinary story.

It is even more amazing when it is seen in the context of the late ninth century. It would be naive, as well as anachronistic, to consider the Moravian mission of Cyril and Methodios as a ninth-century ecumenical venture, sponsored by Rome and Constantinople for extending the Kingdom of Christ. This was not excluded, of course, but it was not what motivated the sponsors. Cyril and Methodios were seen as allies in another venture altogether and one that had to do with influence and political power. The invitation from Rastislav, in the first place, was motivated by his desire to keep Moravia separate from the diocese of Salzburg and free from the hegemony of the Frankish missionaries. The ready agreement of Patriarch Photios and Emperor Michael III arose from their desire to have their own men in Moravia and thus create a buffer state, so to speak, between the West and Bulgaria. Popes Nicholas I, Hadrian II and John VIII must have seen the Moravian mission both as a means of recovering control over Illyricum and a way of strengthening their hand in the struggle over Bulgaria. Troickij has a point in proposing that the enterprising apostle (which Methodios certainly was) must have wanted to get away from all this ecclesiastical and political rivalry. But he overstates his case. In the light of all this political intrigue, Cyril and Methodios emerge with even greater credit than ever. Their single-minded dedication to preaching the Gospel to the Slavs is remarkable. Their triumph was to lay a firm foundation for the Church among the Slavs, and this endures.

The influence of Methodios the canonist did not stop with his death. While it is true that, shortly after his death, his close collaborators were expelled from Moravia by the pro-Frankish government of Sventopulk and some of them were even sold into slavery, disciples of his were welcomed in Bulgaria. In this way the pioneering work of Methodios was carried on and developed in Bulgaria and from there it passed on among other Slav peoples. Nor was his Slavonic collection of canons entirely forgotten by the Western Slavs of Moravia. Since

[72] D. Obolensky, *The Byzantine Commonwealth*, 146.

it was only the foreign (i.e.Greek) missionaries who were expelled, many Slavonic Christians remained and kept alive the heritage of Methodios. In a medieval chronicle from Croatia, praising Duke Sventopulk of Moravia, we read:

> He instituted many good customs and laws, and if anyone wishes to know about these, let him read the Book of the Slavs, called the Methodios. There he will learn what good institutions were set up by this most benign king.[73]

There is general agreement that the book here referred to as the 'Methodios' must be the *Nomokanon* of Methodios.

The mission of Cyril and Methodios is important from many points of view: it had the recognition of the bishops of Rome, the approval of the patriarchs of Constantinople and the Byzantine Emperor. It opened up the Slav world to the message of the Gospel in a language other than Latin and Greek. It laid the foundations of the whole literary culture of the Slavs. Their mission of evangelization of the Slavs takes on a particular interest for us today when we recall that it was carried out at a time of growing divergences between Eastern and Western Christianity which, unfortunately, were destined to increase. The enterprising work of Cyril and Methodios is a fine example of how new situations can be met with courage and imagination, able to pay due attention both to the Christian tradition and to the particular needs of the people being evangelized. Their mission showed great respect for the culture of the Slav peoples. It was for this reason that Pope John Paul II proposed Cyril and Methodios as true models for all Christian missionaries and 'authentic precursors of ecumenism'.[74]

In the last two chapters we have examined the state of canon law in the ninth century in the East and in the West. We have reported the developing monarchical government of the Western Church, as it became more and more centralized under the bishop of Rome. The bishops were still elected locally and there was no obligation to have the election confirmed by Rome. But there was little synodal activity. Each bishop administered his diocese with little interference from his metropolitan or from the other bishops. Bishops, priests and deacons in the West were strongly urged to observe continence, and a consummated sacramental marriage was considered indissoluble, with no possibility of divorce and re-marriage envisaged in church law.

In the Eastern Church of Constantinople church order and discipline were considerably different. There was the same faith in Christ and acceptance of Christian doctrine, as laid down in council definitions, but a different regime

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[73] 'Multas leges et bonos mores instituit, quos qui velit agnoscere, Librum Sclavorum qui dicitur *Methodios* legat; ibi reperit qualia bona instituit rex benignissimus'. MMFH, vol. 1, 244. See C. Vasil', *Fonti canoniche*, 75, n. 184.

[74] For a discussion of the influence of Cyril and Methodios on the growth of the Church in Russia, see D. Obolensky, *Byzantium and the Slavs* (New York 1994).

obtained: in government and in sources of law there was an emphasis on episcopal synods. The bishops were elected in the local church. There was a married clergy, though a priest could not marry after his ordination, or re-marry if his wife died, and the bishops were always chosen from celibate clergy. As in the Western Church, the teaching on the indissolubility of marriage was stressed, but there existed in the East the possibility in law of re-marriage after divorce in special circumstances. By his Slavonic versions of Greek canonical books for the Christians of Greater Moravia, Methodios prepared the way for the reception of this Eastern discipline by the Church of the Slavs. The following observation from an apostolic letter by Pope John Paul II, written on the occasion of the eleventh centenary of the death of St Methodios, is an apt conclusion to this chapter on Methodios the canonist.[75]

> Ever since the ninth century, when in Christian Europe a new organization was emerging, Saints Cyril and Methodios have held out to us a message clearly of great relevance for our own age ...Their work is an outstanding contribution to the formation of the common Christian roots of Europe, roots which by their strength and vitality, are one of the most solid points of reference, which no serious attempt to reconstruct in a new and relevant way the unity of the Continent can ignore. After eleven centuries of Christianity among the Slavs, we clearly see that the heritage of the brothers from Thessaloniki is and remains for the Slavs deeper and stronger than any division. Both Christian traditions – the Eastern deriving from Constantinople and the Western deriving from Rome – arose in the bosom of the one Church, even though against the background of different cultures and of a different approach to the same problems. This diversity, when its origin is properly understood and when its value and meaning are properly considered, can only enrich the culture of Europe and its religious tradition, and likewise become an adequate foundation for its hoped-for spiritual renewal.

Apart from the diversity in discipline and administration that has been discussed, one should not gloss over other serious differences that existed between East and West and even within the Western Church in the ninth century. Photios had serious difficulties about the theology of the *filioque* as well as its addition to the Creed. The Carolingians had serious difficulties about accepting the Second Council of Nicaea and its promotion of the cult of icons. Photios did not accept Pope Nicholas' manner of exercising papal primacy of jurisdiction, something that also caused difficulties in the Carolingian Empire, as is clear from the reaction of outstanding churchmen like John of Ravenna and Hincmar of Rheims. These differences in theological thinking and in modes of church administration did exist. But they did not sever communion between the Churches. They did not result in schism. They disturbed but did not break the

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[75] Pope John Paul II, Encyclical Letter, *Slavorum apostoli*, (2 June 1985), n. 25.

common faith in Christ. These differences and difficulties were thought to be compatible with full communion between East and West. It is precisely this diversity in unity that I am trying to illustrate historically in this book.[76]

Another factor that should not be overlooked here is the question of language. The decision that Cyril and Methodios took at the outset of their mission to translate key Christian texts into Slavonic was an outstanding exercise of initiative and one that had far-reaching consequences. When in the following century the Russians converted to Christianity, they had ready to hand the Christian liturgy and Scriptures in Slavonic.[77]

[76] For the doctrinaldifficulties between Photios and the Carolingians, see R. Haugh, *Photios and the Carolingians. The Trinitarian Controversy* (Massachussetts 1975). This is a well-documented study of the controversy that contributed eventually to the disruption of the medieval Church. The author relates doctrinal developments to cultural and political history in a way that makes the eventual schism between East and West more intelligible.

[77] See J. Meyendorff, *Byzantium and the Rise of Russia,* 22–23 .

CHAPTER FOUR

Gratian of Bologna: The Consolidation of Pontifical Law

So far I have considered the work of a few outstanding canonists who made their mark on the development of canon law in the sixth and the ninth centuries, and it has been indicated briefly why these canonists are important for the development of canon law. Also, in making a comparison between the Eastern Churches and the Western Church, an attempt has been made to bring out the similarity and the diversity in different canonical traditions and the parallel developments within different, even though united, Christian communities. It has been shown that, starting out from the same conciliar canons of the early centuries, there were two distinct directions taken by the canon law right from the time of John Scholastikos in Constantinople and Dionysius Exiguus in Rome. In the ninth century these two different directions were much more clearly evident in the *Nomokanon in XIV Titles* and in the False Decretals. In the late ninth century full communion had been re-established between Rome and Constantinople. There had been difficulties and tensions during the first part of the patriarchate of Photios but these had been resolved. Yet within the profession of the same Christian faith, it was possible to recognize a legitimate diversity of church order in the East and in the West. Unity of faith did not, therefore, entail uniformity: there were different ecclesial structures, different discipline, different traditions. Diverse patrimonies were united through the same faith in Christ, in his Church and in his sacraments.

The next two chapters continue this investigation and examine the work of the two most distinguished canonists of the twelfth century: Gratian in Bologna and Theodore Balsamon in Constantinople. These two canonists cannot be treated satisfactorily together in one chapter – not least because I want to deal, in some detail, with the way they treated three areas in particular: legislative authority in the Church, clerical celibacy, and marriage legislation. These topics have been selected because they are areas in which there are notable differences in approach between the Latin Church of the West and the Church of Constantinople. There is, however, a serious difference between the situation in the twelfth century and the situation that had obtained in the sixth and the ninth century. In the sixth and in the ninth century there was the One Church, Constantinople and Rome in full communion with each other. By the mid-twelfth century, this situation had changed. Differences between Rome and Constantinople had led to the conflict between Patriarch Michael Keroularios of Constan-

tinople (1043–1058) and Cardinal Humbert, the papal legate, in 1054.[1] Historians now think that the importance of the 1054 mutual excommunications has been exaggerated, and that it is not clear when the state of schism between East and West came to be a generally accepted fact.[2] About sixty years after the 1054 episode, the abbot of Monte Cassino, in a letter to the Benedictines in Constantinople, could write: 'we truly hold, and from the heart firmly believe, that although the customs of the Churches are different, nevertheless there is one faith, indissolubly united to the head, that is Christ: and that He himself is one and remains the same in His body'.[3] Be that as it may, Gratian and Balsamon were working in a changed situation one hundred years after Patriarch Michael Keroularios and Cardinal Humbert of Silva Candida. How this changed climate was reflected in their work as canonists will be examined later. First of all, a word about what Gratian did and about the method he adopted in his monumental *Concordia Discordantium Canonum.*[4]

Gratian and the *Concordia Discordantium Canonum*

Gratian's influence on the development of canon law in the Latin Church would be difficult to overestimate. John Noonan expressed the general view of legal historians when he wrote:

> The *Concordia Discordantium Canonum* is one of the most influential law books of all time – a teacher's case-book which became, for over 700 years, the law of the Catholic Church; a book which is at the roots of Western legal thought, ecclesiastical and civil; a vast storehouse of prior legislation and judgments, a set of masterful hypotheticals, and a rich commentary distinguished by its shrewdness and wisdom. In any time, in

[1] Michael Keroularios, the powerful patriarch of Constantinople (1043–1058), regarded the bishop of Rome as his equal and refused to acknowledge the Roman primacy. He was excommunicated by the papal legate, Cardinal Humbert of Silva Candida, the strenuous defender of the primacy of the pope.

[2] The schism between the Western Church and the Church of Constantinople was caused by many factors. Its origin cannot be dated exactly because it emerged from a growing alienation between the West and the East that had developed over the centuries. The first open schismatic act is said to have occurred in 1098 when the Norman crusader, Bohemund I, appointed a Latin patriarch in Antioch.

[3] Bruno of Asti, abbot of Monte Cassino, PL, vol. 165, cols 1085–1090. See G. Every, *The Byzantine Patriarchate 451–1204* (London 1962), 189.

[4] What Gratian produced was not a concordance in the normal sense of that word, but a harmonization, an attempt to bring harmony into the canonical collection where there were canons that seemed to be in contradiction with each other. It was an attempt to bring 'Harmony from Dissonance'. See S. Kuttner, *Harmony from Dissonance. An Interpretation of Medieval Canon Law* (Pennsylvania 1960).

> any land, its author would be honoured for his achievement and sought after for his skill.[5]

Yet, as Noonan goes on to show, there is very little that we can say with any certainty about the man who produced the *Concordia.* Almost all we know is hearsay and much of that is legend. We *can* say that a man called Gratian composed a substantial part of the *Concordia*, and that he worked in Bologna in the first half of the twelfth century – very probably between 1120 and 1140. Beyond that, all is hearsay, impossible to verify. However, we do have the *Concordia Discordantium Canonum,* and it is this that merited for its creator the title of the 'father of the systematic study of canon law'. In fact, this canonical collection is a very personal work and one can learn a lot about its compiler's personality and his opinions both from his selection of canons and from his personal commentary that runs through the collection.[6]

We have long been accustomed to think of the text of the *Decretum,* as edited by Emil Friedberg and extant in so many medieval manuscripts, as the one and only text of Gratian's great work.[7] Professor Winroth has recently shown that this is not the case.[8] He has discovered an earlier version of the *Decretum,* and claims that a 'first recension' of the *Decretum* is preserved in four twelfth-century manuscripts. These manuscripts have, in fact, long been known, but because they are so much shorter than the *Decretum* as we know it today, (about 60% of the Friedberg text) they were thought simply to be twelfth-century abbreviations of Gratian's collection, and many such abbreviations were made at that time. Winroth sets out to prove that the text preserved in these manuscripts is not an abbreviation but an earlier version of the *Decretum.* In the earlier version Winroth shows that Gratian's argument is well-structured and expounded in a clear and concise manner. So the lack of clarity and the prolixity in the *Decretum*, commented on since the time of the first commentors on the *Decretum*, the Decretists, are generally the result of additions that were later made for the final version. The texts that were later added are often digressions from the main argument as laid out in the first version. They do not add any-

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[5] J. T. Noonan, 'Gratian slept here: The Changing Identity of the Father of the Systematic Study of Canon Law', *Traditio* 35 (1979), 145. See also C. Messini, 'Postille sulla biografia del *Magister Gratianus*, padre del diritto canonico,' *Apollinaris* 54 (1981), 509–537.

[6] As R. Southern has pointed out, 'The main, indeed the only substantial, evidence we have about the mind, the aims, and the stimulus behind this work, which did more than any other to shape the organized religious life of Western Christendom in the twelfth and thirteenth centuries, is to be found in the work itself. It is a work, as Bishop Stubbs said of constitutional history, that "cannot be mastered – can scarcely be approached – without an effort ... but has a deep value and abiding interest to those who have courage to work upon it"'. R. W. Southern, *Scholastic Humanism and the Unification of Europe. Volume I. Foundations* (Oxford 1995), 284.

[7] Emil Friedberg (editor), *Corpus iuris canonici. I, Decretum magistri Gratiani* (Leipzig 1879).

[8] Anders Winroth, *The Making of Gratian's Decretum* (Cambridge 2000).

thing to the argument and frequently tend to confuse the line of reasoning.[9] He has put forward the evidence for his thesis clearly and convincingly and he has already convinced a number of experts in the field.[10]

Having established that the shorter recension is the original version of the *Decretum,* Winroth goes on to outline how the two recensions were created. It is generally held that the final *Concordia Discordantium Canonum* was completed around the year 1141. Winroth does not accept this view. It seems pretty certain that, because of the reference to the Second Lateran Council in his comment after canon 34 of Distinction 63.[11] Gratian would have completed the *first* recension in 1139 or slightly later, but the longer version was published much later. Did the *Decretum* grow gradually from this first recension? Winroth notes that the manuscripts containing the first recension all contain the same text. The differences between them are minor. This suggests that this was a finished product which its author considered ready to be circulated. There is no evidence to suggest that the *Decretum* developed gradually into the final text that we now know. Apart from the Admont manuscript, which contains the first recension, together with a supplement containing canons and *dicta* from the final recension, Winroth knows of no manuscript which contains a version of the *Decretum* that is longer than the first recension but shorter than the final *Decretum* and which could, therefore, be considered to be an intermediate stage in its composition. He sees no reason to imagine that the final version came about in a piecemeal and gradual manner over the years. All the second-recension manuscripts of the *Decretum* – and there are some 600 extant – contain the same text with only minor variations. So there was a single original of the final text. When was this completed? From internal evidence alone it is impossible to date securely the final version. Winroth thinks that it should be dated to the fifties of the twelfth century because it was used by Paucapalea and Rolandus, and it

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[9] This gains confirmation in a recent study by Jean Werckmeister. On the basis of Winroth's discovery of a first recension, Werckmeister has made a study of the two versions of the treatise on marriage in Gratian's *Decretum* (Causa 27 to Causa 36). His conclusion is that the first recension is well structured and expounded in a clear and concise manner, 'plus homogène, mieux construite, moins répétitive que la version longue de l'édition de Friedberg'. He too finds that the lack of clarity in the Friedberg text is the result of the additions. However, he thinks that the 'second Gratian' at times maintains a doctrine that is different from that of the first recension. So he thinks that the two versions must have different authors. See J. Werckmeister, 'Les deux versions du *De Matrimonio* de Gratien', *Revue de Droit Canonique* 48 (1998), 301–316.

[10] See Peter Landau, 'Burchard de Worms et Gratien: Á propos des sources immédiates de Gratien', *Revue de Droit Canonique* 48 (1998), 233–235; Landau refers to Winroth's discovery as 'la découverte fascinante' (233); Rudolf Weigand, 'Chancen und Probleme einer baldigen kritischer Edition der ersten Redaktion des *Dekrets* Gratians'. *Bulletin of Medieval Canon Law,* new series, 22 (1998), 53–75; Jean Werckmeister, 'Les études sur le Décret de Gratien: Essai de bilan et perspective'. *Revue de Droit Canonique* 48 (1998), 363–379; Jean Gaudemet, 'Les sources du Décret de Gratien', *Revue de Droit Canonique* 48 (1998), 247–261.

[11] Gratian, D.63, d.p.c.34.

must be before 1157 or 1158 because this final version was used by Peter Lombard when he was composing his *Sentences* in Paris.[12]

One may wonder why a longer version of the *Decretum* was thought necessary after only fifteen years or so. Winroth thinks this question can be answered if we examine carefully the teaching of canon law in Bologna in the twelfth century. It can safely be said that until the arrival of Gratian's *Decretum* the academic teaching of canon law was not really possible. 'Systematic teaching of canon law is barely imaginable before the composition of [the first recension of] the *Decretum*. No previous collection was particularly suited for teaching canonistic doctrine, and there is no other evidence for any earlier teaching even approaching the level of sophistication reached by Gratian'.[13] It was the *Decretum* that became the central text of the schools of canon law. The first recension provides a clearer picture of how Gratian conceived his subject. This original version seems to be much more clearly a teacher's text than the final recension. Its didactic purpose comes out more clearly, and the ratio of commentary (*dicta)* to canonical texts is greater than in the final *Decretum*. It was in fact Gratian's manual of canon law, bringing together, for the first time, both text and commentary, the canons and the *dicta Gratiani*, that facilitated the rapid development in the study of canon law in the late twelfth century. It is for this reason that Gratian has been called the 'father of the science of canon law', and, as will be shown shortly, an examination of his method in the *Decretum* makes it clear that he merited this title. However, the development of the discipline was so rapid that it was soon realised that the range of canonical texts provided by the first recension was too small. Therefore, many new canonical texts were added. Also, the parallel development in the study of Roman law made it both possible and necessary to include additional Roman law texts.

With the discovery that two distinct recensions of the *Decretum* have been preserved, the question arises: Was it Gratian himself, or Gratian with his disciples, or an early generation of canonists after Gratian, who completed the final recension of the *Decretum* which from the mid-twelfth century was used in the schools and in judging cases? There is no external evidence to throw light on the question. Nothing is known with certainty about Gratian except that he compiled at least one recension of the *Decretum*. So the only evidence available is the style and the content of the texts themselves, and such internal evidence is seldom conclusive. 'It may ultimately turn out to be impossible to determine with certainty whether or not the same man wrote the two recensions of the *Decretum*'. This new discovery about there being two editions of the *Decretum* raises the old problem of the place that Roman law has in the collection. Gratian did not deliberately exclude Roman law from his compilation because, in fact,

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[12] See Peter Lombard, *Sententiae in IV Libris distributae* (Grottaferrata 1971–1981), vol. 2, 473–475.

[13] A. Winroth, *Making of Gratian's Decretum*, 144.

there are many Roman law texts in the first recension of the *Decretum,* though these were not taken directly from Justinian's *Corpus.* However, Gratian's use of these texts indicate that he did not know his Roman law very well. Now if Irnerius, Bulgarus and others were teaching Roman law in Bologna before Gratian produced his *Decretum*, how does one explain that a man of his ability and industry knew so little about Roman law? It is now more than fifty years since Adam Vetulani demonstrated that a large number of Roman law texts were additions to the original *Decretum*, and this is now generally accepted. This is completely vindicated by Winroth's discovery of the first recension where these texts do not appear. Vetulani, however, went on to argue that Gratian, working, as he maintained, towards the beginning of the century, had quite deliberately omitted secular law from his collection for political motives, in support of Pope Paschal II in the Investiture Controversy against the emperor. More recently, Sir Richard Southern, following the same line of thought, has argued that Gratian changed his mind about the use of Roman law while he was compiling his *Decretum*. 'This is a change of such importance for understanding both the environment in which he worked and the success of the work as a text-book for the schools that it requires special consideration'.[14] According to Southern, Gratian allowed Roman law only a small place in his first plan for the *Decretum*; in fact,'he seems deliberately to have kept it at arm's length',[15] and Southern thought that the hostility between papal and imperial interests provided good reason for this caution towards the beginning of the twelfth century.

Professor Winroth has shown convincingly that there is no longer any need for these speculations of Vetulani and Southern concerning the absence of Roman law texts in the early recension of the *Decretum*. He has done this by taking a radically new look at the common opinion that Irnerius had begun his law school in Bologna towards the beginning of the twelfth century. He argues that the development of the Roman law school in Bologna was later than is commonly thought. The evidence that Irnerius brought the study of Roman law to such a high level at the beginning of the twelfth century is very flimsy. It is based on a statement by Odofredus, who was writing in the second half of the thirteenth century, and on very dubious attributions of glosses to Irnerius. Winroth examines the evidence for the dating of Bulgarus and Irnerius and concludes that the view that Roman law flourished in Bologna in the first years of the twelfth century is simply not supported by contemporary twelfth-century documents. This development was in fact achieved by the generation of the Four Doctors, Bulgarus (d. around 1166), Martinus (d. around 1160), Ugo of Porta Ravennate (d. around 1166), and Jacobus (d. 1178) in the *middle* of the twelfth century. Winroth argues that there is no secure evidence that places any substantial part of Bulgarus' teaching before 1141. So it seems unlikely that the

[14] R. Southern, *Scholastic Humanism and the Unification of Europe,* 292.

[15] R. Southern, *Scholastic Humanism,* 297.

Four Doctors were Irnerius's students. 'Against this background, the relationship of Gratian to Roman law appears less problematic than was earlier thought. When he worked on the *Decretum* in the 1130s, the Roman law school in Bologna was still in its infancy. The lack of systematic work meant that as important a subject as procedural law was extremely difficult to approach since no one place in Justinian's legislation treats of it. It is, therefore, not surprising that Gratian's grasp of Roman procedural law was shaky, and that most of the Roman law texts added by the author of the second recension concern procedure. Gratian did not choose to exclude Roman Law from the *Decretum*; it was simply not possible for him to do much more than he did without devoting his time to specialized study in a subject other than his own'.[16]

In the fifties the situation was very different. The Roman law school and the canon law school had both developed very rapidly indeed. This indicates why Part III on sacramental law, the *de consecratione* was added to the original version, and why hundreds of new canonistic texts were introduced. It also explains the addition of so many Roman law texts. By the fifties of the twelfth century, the author of the final version of the *Decretum* had a much better training in Roman law. So he was able not only to add many Roman law texts to the *Decretum*, but he was also in a position to correct the first recension in matters where Roman law was concerned.[17] So Gratian's apparent neglect of Roman law in the first recension of the *Decretum* does not need any further explanation. The lack of Roman law in the first recension should be seen as evidence of the current state of legal teaching in Bologna when Gratian was compiling the *Decretum*, in the twenties and thirties of the twelfth century. However, the person who produced the final version of the *Decretum* did have a good knowledge of Roman law which suggests that this person was not Gratian. Winroth examines the internal evidence – internal cross-references, glosses and the *dicta* – and he thinks that these indicate that probably two authors were involved, but the question is still open.

To understand fully the achievement of Gratian it is important to bear in mind just when he produced the first version of his *Decretum.* As we have seen, it is now generally agreed that he completed the first version of his great commentary around the year 1141, that is to say, at the end of what is generally referred to as the Investiture Controversy between the pope and the emperor.[18]

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[16] A. Winroth, *Making of Gratian's Decretum*, 73.

[17] A good example of this can be seen in Gratian, C.3 q.1 d.p.c.2, where the first recension is not accurate about the Roman law in question, so the final version of the *Decretum* omits this *dictum* and substitutes a new one in harmony with Justinian's law. (See Winroth, *Making of Gratian's Decretum*, 148–151).

[18] This is the term applied to the series of disputes between popes and emperors concerning episcopal appointments from the time of Pope Gregory VII and Henry IV to the settlement in 1122, known as the Concordat of Worms. The problem was about who appointed the bishops in the Church: were they freely elected or were they appointed by the emperor? The Concordat of Worms

The period from 1075, the first year of the reign of Pope Gregory VII, to the Concordat of Worms in 1122 was a most important period in the development of Western civilization.[19] It was an age of intense development in both civil and canon law. The school of Roman Law, commonly linked with the name of Irnerius[20] had been founded at Bologna in the twelfth century, and from that time onwards Justinian's law-books – the *Corpus Iuris Civilis* – had increasingly become the object of critical examination and commentary. The school of glossators began to flourish and Bologna became the leading law-school in Christendom where for the next two centuries a succession of distinguished glossators added lustre to its reputation. It was a lawyer's world. As Maitland observed, 'In no other age since the classical days of Roman law, has so large a part of the sum total of intellectual endeavour been devoted to jurisprudence'.[21] Until the eleventh century, in the Western Church there was no universally accepted and authoritative body of church law. There was no Western equivalent to the Eastern *Nomokanon of Photios*, for example. The Gregorian Reformers tried to remedy this situation and clear up confusion by establishing a body of law that would reform the Church and be universally binding. This revival in canon law was not directly motivated by a desire for centralization and the concentration of authority in the hands of the pope – though, in actual fact, this was one of the results of the reform movement. What Pope Gregory VII and those who supported him were striving after was the radical reform of church discipline. They looked to canon law to help them in their efforts to rid the Church of corruption and bring it back to the pristine practice of its Chris-

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was a compromise solution between Pope Callistus II and the emperor, Henry V. Church authorities carried out the investiture for the bishop's spiritual and ecclesial duties with staff and ring, and the bishops were to be freely elected. The Emperor carried out the temporal investiture with the sceptre. For a comprehensive survey of recent investigations into the Investiture Controversy, with select bibliographies, see Uta-Renate Blumenthal, *The Investiture Controversy. Church and Monarchy from the Ninth to the Twelfth Century* (Pennsylvania 1987).

[19] See H. J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard and London 1983), especially Part I: 'The Papal Revolution and Canon Law'.

[20] Irnerius (or Wernerius; his name has come down to us in a variety of forms) has been commonly thought of as the founder of the teaching of Roman Law in Bologna. Modern studies have shown that Irnerius seems primarily to have been engaged, not as a teacher or lecturer in law, but as a practising lawyer in the service of both emperor and pope. As has been noted above, Professor Winroth has cast doubt on the tradition that Irnerius was teaching Roman Law at the beginning of the twelfth century. See Winroth, *Making of Gratian's Decretum*, 162–167. Also R. Southern, *Scholastic Humanism and the Unification of Europe*, 278–282; James Brundage, *Medieval Canon Law*, 44–46; J. A. Clarence Smith, *Medieval law teachers and writers, civilian and canonist* (Ottawa 1975).

[21] F. Pollock – F. W. Maitland, *The History of English Law* (Cambridge 1968), vol. I, 111. See also P. Vinogradoff, *Roman Law in Medieval Europe*, Oxford 1961; H. Kantorowicz, 'Note on the Development of the Gloss on the Justinian and the Canon Law,' in Beryl Smalley, *The Study of the Bible in the Middle Ages*, Oxford 1951, 52–55; W. Ullmann, *Law and Politics in the Middle Ages*, London 1975.

tian ideals. Their declared intention was for a spiritual reform through the restoration of the ancient discipline.

The canon law was to be an instrument of this restoration. With this in mind the canonists in the eleventh and the twelfth centuries searched out patristic, conciliar and papal documents which they hoped would be received as authoritative by all Christians and which would confirm the primacy of the bishop of Rome and protect the rights of the Church against growing claims by the secular rulers. They were out to protect the freedom of the Church, enforce by law the traditional ideal in the Western Church of clerical celibacy, and remove the practice of simony. (One is reminded of the aims of the ninth-century forgers who produced the False Decretals). It was this desire for spiritual reform that led to the series of canonical collections that appeared continuously throughout the century preceding Gratian's collection.[22] Indeed it was the existence of these collections of *auctoritates* which made possible the composition of Gratian's *Concordia.*

All that being said, however, Gratian does deserve to be given the honour of being the first to produce a systematic treatment of canon law. He deserves this for the following reasons:

1 First of all because he was the first to compile a comprehensive synthesis of the whole of canon law. Canonists before Gratian had written treatises on particular areas of the law, but no one had produced a collection of the whole of canon law together with a running commentary on the texts. For this reason the *Concordia* has justifiably been called 'the first comprehensive and systematic legal treatise in the history of the West'.[23] It is also important to remember that Gratian did not take over a pre-existing official collection, as Balsamon did in twelfth-century Constantinople. Gratian had to make his own collection and devise his own structure for the collection.
2 Secondly, Gratian was the first to combine systematically with the canons a commentary that aimed at showing how to resolve apparent contradictions between the canons and so produce a harmonious body of legislation with the discordant notes removed, *Concordia Discordantium Canonum* – a harmonisation of discordant canons.[24] It had long been felt before Gratian's

[22] As a magisterial introduction to these canonical collections, see Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en occident depuis les Fausses Décrétales jusqu'au Décret de Gratien.* 2 vols (Paris 1931–1932). See also H. Fuhrmann, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen,* volume 2. John T. Gilchrist, *The Collection in Seventy-Four Titles. A Canon Law Manual of the Gregorian Reform* (Toronto 1980).

[23] Berman, *Law and Revolution,* 143.

[24] What Gratian set out to do is neatly summed up in his *dictum* in D.50, d.p.c.24: 'quomodo igitur huiusmodi auctoritatum dissonantia ad concordiam revocari valeat, breviter inspiciamus' ('Let us briefly see how the disharmony of authorities of this kind can be brought back into harmony').

time that there was a need to reconcile conflicting canons. The famous prologue to the *Decretum* of Ivo of Chartres provides clear evidence of this.[25] An even clearer proof of this is the *Liber de Misericordia et Justitia,* written before 1094 by Alger of Liège (1050–1131) and well-known to Gratian.[26] Gratian would also have known the *De excommunicatis vitandis* of Bernold of Constance of c.1085. Abelard's attempt at reconciling differences found in the writings of the Fathers in his *Sic et Non* was also influential.[27] So the method was not invented by Gratian. However, no one had as yet applied it in such a systematic way to the whole of canon law and Gratian's application of the scholastic method is an important part of his achievement.

3 Thirdly, Gratian brought to canon law a new emphasis on logic and reason. He applied a method which enabled him to arrive at a clear juridical doctrine. He did so by applying the new approach he had learned from the scholastic theologians and the Roman lawyers. The method is found in Part I of the *Decretum*, but it is particularly clear in Part II.

i) He begins by formulating a problem.

ii) To this problem he proposes a reply, and confirms this reply by citing conciliar canons, papal decretal letters or other *auctoritates.*

iii) He then proposes possible objections to the reply that he had just given and supports these objections by citing other authorities.

iv) Finally he tries to resolve the apparent contradiction by making use of distinctions that he had picked up from the scholastics. In other words,

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[25] Ivo, Bishop of Chartres 1091–1115, compiled canonical collections, the *Decretum,* and the *Panormia,* which was very widely used during the first half of the twelfth century. It is now thought that the *Tripartita* was not by Ivo. (See Winroth, *Making of Gratian's Decretum,* 16). Ivo's famous prologue, in which he provides guidelines for the interpretation of seemingly contradictory canons, is found in several places in his writings. See PL, vol. 161, cols 47–60 and 1041–1046. It was often copied in the twelfth century as a separate treatise, *De consonantia canonum.* For an English translation of this very influential prologue, see R. Somerville and B.C. Brasington (editors), *Prefaces to Canon Law Books in Latin Christianity. Selected Translations 500–1245* (Yale 1998), 132–158. On Ivo's work as a canonist, see Fournier and Le Bras, *Histoire des collections canoniques en occident,* vol. II, 55–114. See also Martin Brett, 'Urban II and the Collections Attributed to Ivo of Chartres', in *Proceedings of the Eighth International Congress of Medieval Canon Law,* edited by Stanley Chodorow (Vatican 1992), 27–46. R. Southern, *Scholastic Humanism and the Unification of Europe,* 252–261.

[26] The *Liber de Misericordia et Iustitia* (PL, vol. 180, cols 857ff.) is a treatise on church discipline in which the author attempts to resolve apparent contradictions in ecclesiastical legislation by a method very similar to that used later by Gratian. In fact, Gratian was greatly influenced by Alger and took about 100 texts from his *Liber de Misericordia et Iustitia.* 'More important, the *dicta Gratiani* contain numerous explanations often copied verbatim from Alger'. See N. Haring, NCE, vol. I, 317. For Alger's influence on Gratian, see also Rambaud in *L'Age Classique*, 68–69.

[27] Peter Abelard, *Sic et Non,* (c. 1123), PL, vol. 178, cols 1339ff. This was an exercise in reconciling apparent differences in the writings of the Fathers. His introduction to this work, in which he provides rules and principles in the comparison of texts, was very influential on later writers, theologians and canonists.

> Gratian introduced a methodological principle by which he was able to formulate clear juridical doctrine.[28]

Some examples will illustrate Gratian's approach. *Quaestio* 1 of *Causa* XII deals with the question of whether or not clerics may possess private property of their own. Gratian begins by declaring that all property of clerics should be held in common, and he supports this opinion by quoting a conciliar decree, a number of papal decretal letters and passages from St Jerome, St Ambrose, St Augustine and St Gregory. But he immediately goes on to state that there is another opinion, with authoritative support, which presupposes that clerics may own property and he cites canon 41 of the *Apostolic Canons* and a conciliar canon. Gratian concludes the discussion by showing that a distinction must be made between church property, which is only administered by the clergy and not owned by them, and the private property of an individual cleric. All should be encouraged to give what they do not need to the poor.[29]

Distinction 50 of Part I of the *Decretum* provides another clear illustration of Gratian's method. He considers the question whether or not clerics who have committed certain crimes may be permitted to continue to function as clerics or be promoted if they have done penance for their crime. His first reply is in the negative – *videtur quod non.* Such clerics may not continue to function as clerics nor can they be promoted to a higher order. He supports this by twelve authorities taken from conciliar decrees and papal letters. On the other hand, continues Gratian, it can be shown that there are many authoritative texts which approve of such clerics remaining at their post and even of being promoted, provided they have done penance. In his own *dictum*[30] he gives some examples of this from the Old and New Testaments. He goes on to cite the example of St John Chrysostom who was deposed by two synods and yet restored to the patriarchate, and continues with a number of authorities – Pope Calixtus, Gregory the Great, St Jerome, St Augustine and others, who allow such clerics to remain at their post provided they do penance and are sincerely repentant. Gratian considers how this apparent disharmony in the church's legislation can be brought into harmony. He does this by making a distinction between those clerics who sincerely repent of their crimes and those who out of fear or ambition only simulate repentance. The former may be allowed to continue to work as clerics and even be promoted, the latter may not. He supports this conclusion by citing a number of canonical authorities.

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[28] For more detailed discussions of Gratian's method, see Rambaud, *L'Age Classique*, 66–69; Berman, *Law and Revolution*, 144–148. The method is well known now from its use by Thomas Aquinas in his *Summa Theologiae*.

[29] For a more detailed discussion of this question, see J. Rambaud, *L'Age Classique*, 66.

[30] Gratian, D.50, d.p.c.12.

Another example is to be found in Distinction 37. The problem here was whether or not priests could be permitted to read books by pagan authors. It would seem that they should not, and Gratian cites six passages from the writings of St Jerome which teach clearly that priests should not waste their time in reading such works, and he quotes the story of St Jerome's being beaten by an angel because he, a follower of Christ, was reading Cicero. In his *dictum* at this point[31] Gratian also recalls the story of the Prodigal Son in the Gospel who was reprimanded because he desired to fill his belly with the husks the swine were eating. From such examples taken from Holy Scripture and the Fathers it would seem to follow that ecclesiastics should not read secular literature. But on the contrary, continues Gratian in the same *dictum*, we are told that Moses and Daniel were learned in the wisdom of the Egyptians and the Chaldeans, and he quotes a number of Christian writers, including St Ambrose, who commend the reading of pagan authors and he quotes a passage from St Bede in which he teaches that it can be very useful to know the books of the pagans. Gratian solves the difficulty by stating that it would be wrong to read the pagan poets simply for pleasure – *ad voluptatem;* but if these authors are read in order to be able to refute the errors they contain or to make use of the erudition contained in them for Christian purposes, then it is permissible for priests to read pagan writers.[32] He supports this conclusion by texts from St Jerome, St Clement, St Augustine and other authorities, pointing out that knowledge of secular literature can be needed to understand the Scriptures, and he likens ignorant priests to the blind leading the blind.[33] In this way he brings the seemingly discordant canons into harmony.[34]

By providing a universally recognized collection of important canonical texts from the past, Gratian in fact prepared the way for the rapid development in ecclesiastical legislation that took place in the late twelfth and in the thirteenth century. His work exercised a great influence on the whole later development of canon law in the West. He was referred to simply as the *Magister* and it is not surprising to learn that Gratian's *Concordia Discordantium Canonum* was one of the most widely copied books in Christendom.[35]

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[31] Gratian, D.37, d.p.c.7.

[32] Gratian, D.37, d.p.c.8.

[33] Gratian, D.37, d.p.c.15: 'Ut itaque ex premissis auctoritatibus apparet, inperitia sacerdotibus semper debet esse adversa, quoniam, cum per ignorantiam cecati, aliis ducatum prestare ceperint, ambo in foveam cadunt'.('So, as is clear from the above-mentioned authorities, ignorance should always be avoided in priests, for when, blinded by ignorance, they begin to offer guidance to others, they both fall into the ditch').

[34] For another example, see Gratian, C.2, q.8. cc.1–5: dealing with the question of whether or not all accusations have to be made in writing.

[35] A. Van Hove, 'Quae Gratianus contulit methodo scientiae canonicae', *Apollinaris* 21 (1948), 12–24; S. Kuttner, 'Gratian the Father of the Science of Canon Law', *The Jurist,* 1 (1941), 2–19. The *Decretum* is conserved in hundreds of extant manuscripts, 44 incunabula, and more than 150 printed editions since 1501. See Stephan Kuttner in 'Gratien' DHGE, vol. 21 (1986), col. 1237.

Gratian's Teaching on Legislative Authority in the Church

At the time of the First Vatican Council Döllinger fulminated against Gratian whom he regarded as an unscrupulous forger working for a power-hungry papacy.[36] There is little evidence to support this accusation. But it is true that the *Decretum* is in complete harmony with the aims of those reformers who firmly defended the rights and privileges of the see of Rome as one of the most effective ways of achieving the aims of the reform movement. The twelfth-century reformers were out to restore the Church to what they considered its pristine splendour. They had three main objectives. The first was to free the Church from the control of feudal kings and landlords and it was thought that this could only be done by removing the kings' right to invest bishops and abbots with the ring and the crozier that were their symbols of office. This caused the long struggle between the popes and the emperors that became known as the *Investiture Controversy.* The second objective of the reformers was to rid the Church of the crime of simony, the trafficking in ecclesiastical preferment, which had become widespread. The third aim was to foster good spiritual leadership for the faithful by enforcing the laws on clerical celibacy. Such was the coherent programme of the reformers and they had tried to support it by means of new canonical collections.

Gratian's *Decretum* grew out of those collections and mirrored their spirit and aims. The first twenty Distinctions in Part I are concerned with the nature, source and authority of the Church's law. The supreme authority of the Roman Pontiff is particularly stressed. Gratian then goes on in Part I to deal with church officials: the ordination of priests, the rights and duties of the clergy, and episcopal election (Distinctions 21–80). The last twenty-one Distinctions in Part I deal with the qualities required in a bishop, with the upkeep of the clergy, the care of the poor and the relationship between civil and ecclesiastical authority. Part II, by far the longest part of the *Decretum*, consists of thirty-six *Causae,* which in turn are divided into *Quaestiones.* These deal with the practical affairs of church administration, beginning with simony and judicial procedure, two areas of special concern to the reformers, and go on to discuss episcopal authority, temporal administration and monastic vows. There follows a long treatise on the sacrament of marriage (*Causae* 27–36). Quite a lengthy treatise on the sacrament of penance has been included at C.33, q.3, and this is divided into seven distinctions. Part III, *De consecratione,* comprising five Distinctions, completes the *Decretum* and deals with the legislation concerning baptism, confirmation and the eucharist.[37]

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[36] See Janus (I. von Döllinger), *Der Papst. und das Konzil* (Leipzig 1869), 154–159. This is quoted by Y. Congar in *L'Église de Saint Augustin à l'époque moderne* (Paris 1970), 146.

[37] It is now thought that these two sections, *De paenitentia* and *De consecratione*, did not form part of the original *Concordia Discordantium Canonum* but were added later. Their style is quite

This structure of the *Decretum,* particularly in its shorter form, reveals the mind and attitude of a teacher providing his students with practical guidance for the administration of the Church, and trying to elucidate legal tradition with a view to actual legal practice. The author clearly intended his work to be a practical handbook for bishops and lawyers in the day-to-day administration of the Church. It superseded all earlier collections and became *the* book of canon law, a text-book that would be in constant use for centuries. As a result, Gratian's *Decretum* contributed perhaps more that any other single influence to the final establishment throughout Western Europe of the theory of absolute papal supremacy. His work made it abundantly clear that it is the papal authority which gives validity to all church law, and that it is from the pope of Rome and the pope alone, that any fresh universally binding law can come, and that no local church can stand against the pope's dissent. Councils cannot be convoked or held without the authority of the Roman Pontiff.[38] The pope is the source of law. It was on this foundation, so clearly and finally laid by Gratian, that the succeeding popes built.[39] A comparison of the early canonical collections of the Gregorian Reform movement with Gratian's *Decretum* shows that while the earlier collections insisted directly and explicitly on the doctrinal principles concerning papal supremacy, Gratian is concerned more with the effects of this primatial jurisdiction when it was put into practice.[40] Although he does not have a special section *De Ecclesia et Romano Pontifice,* he very frequently underlines the supreme law-making power of the papacy in which, as one writer has put it, he sees 'le principe créateur du droit de l'Église'.[41]

In *Causa* 24, dealing with heresy and excommunication, Gratian interjects a long *dictum* in which he explains why it is not possible for an excommunicated or heretical bishop to excommunicate anyone. The reason is that such a person, by his heresy or his excommunication, has placed himself outside the Church and so is deprived of the power of the Spirit without which there can be no power of binding and loosing. Gratian goes on to make a clear statement of the supremacy of the Roman Pontiff: 'And so when the Lord gave to all the disciples an equal power of binding and loosing, he promised that he would give Peter the keys of the kingom of heaven for all and before all, saying: "To you I

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different from the rest of the collection. See P. Landau on 'Gratien' in *Theologische Realenzyklopädie,* 14 (1985), 125–126. This has been partly confirmed by Winroth who has shown that the third part, *de consecratione,* is not in the early version, but the *de paenitentia* is included. 'The text is shorter than the text in Friedberg's edition, but all seven distinctions are present'. Winroth, *Making of Gratian's Decretum,* 128.

[38] D.17, cc.5, 6. 'Non est concilium, sed conventiculum, quod sine sedis apostolicae auctoritate celebratur' (attributed to Pope Pelagius II [579–590] but in fact from the False Decretals).

[39] See R.C. Mortimer, *Western Canon Law* (London 1963), 49–50.

[40] See C. Munier, *Les sources patristiques du droit de l'Église,* 151–152.

[41] C. Munier, *Les sources patristiques du droit de l'Église,* 152. See also J. Gaudemet, *Église et Cité* (Paris 1994), 342–344.

will give the keys of the kingdom of heaven"'.[42] He goes on at once to cite a number of papal decretals and patristic texts. The rubrics or summaries attached to these canons bring out with unmistakable clarity the primacy of the Roman See: 'Non solvitur vel ligatur nisi quem auctoritas Beati Petri solverit aut ligaverit' ('no one is absolved or bound except the one whom Blessed Peter has absolved or bound');[43] 'Solus Petrus mandatum accepit, ut hamo piscem caperet' ('Only Peter has received the command to catch the fish with his hook');[44] 'Aliud quam Romana Ecclesia neque sentire, neque velle permittitur' ('It is not permissible to feel or to desire in any way different from the Church of Rome').[45] It is a controversial point whether or not these rubrics should be attributed to Gratian himself, but this is irrelevant to the point I am making here since the rubrics do in fact give accurate summaries of the canons that he is citing.[46]

The twelfth century witnessed some important innovations in the manner of speaking about the papal monarchy. Two terms became particularly important. The pope came to be addressed as the Vicar of Christ and this came to be regarded as a title unique to the bishop of Rome.[47] Another term that became increasingly common was the pope's fullness of power – his *plenitudo potestatis.* The term 'plenitude of power' had a long history before Gratian composed his *Decretum*, but the way he used the expression provided the foundations for the later development of the theory about papal fullness of power.[48] The expression itself had been used in two different senses. On the one hand, it indicated the appellate jurisdiction of the bishop of Rome, mentioned in the third canon of

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[42] 'Unde, cum Dominus omnibus discipulis parem ligandi atque solvendi potestatem daret, Petro pro omnibus et pre omnibus claves regni celorum se daturum promisit, dicens: Tibi dabo claves regni celorum'. Gratian, C.24, q.1, d.p.c.4. This text from the Gospel of St Matthew, 16: 18–19, is cited repeatedly throughout the *Decretum* as the basis of papal authority in the Church. See Gratian, D.12, c.2; D.19, c.9; D.21, cc.2,3; D.50, c.54; C.9, q.3, c.14; C.11, q.1, c.14; C.24, q.1, cc.15, 18, 20, 22. See B. Tierney, *Foundations of the Conciliar Theory.* Second edition (Leiden/New York 1998), 23. It is interesting to note that six of these canons were added in the second recension of the *Decretum.*

[43] Gratian, C.24, q.1, c.5 (Pope Leo I).

[44] Gratian, C.24, q.1, c.8 (St Ambrose).

[45] Gratian, C.24, q.1, c.15 (attributed to Pope Marcellus, but it is a forgery from the False Decretals).

[46] For a discussion of the origin of these summaries, see J. Rambaud in *L'Age Classique*, 69–74.

[47] See C. Morris, *The Papal Monarchy*, 206. M. Maccarone, *Vicarius Christi: Storia del titolo papale* (Rome 1952).

[48] The term *plenitudo potestatis* was first used to describe papal authority by Pope Leo the Great in the fifth century, and although he gave very clear expression to the concept of papal monarchy, the term 'fullness of power' did not come into common use until the twelfth century. See W. Ullmann, 'Leo I and the Theme of Papal Primacy', *The Church and the Law in the Earlier Middle Ages,* Variorum Reprints (London 1975), 26–51.

the fourth-century Council of Sardica,[49] and it was used with reference to the reservation to papal court of cases concerning bishops.[50] There is, on the other hand, a more far-reaching conception of papal *plenitudo potestatis.* It can be taken to mean the jurisdiction of the bishop of Rome as the *iudex ordinarius omnium,* (the ordinary judge of everyone); that is to say, from his office as bishop of Rome he derives jurisdiction over the entire Church.[51] Gratian alludes to this plenitude of power in his *quaestio* on the judicial powers of metropolitans.[52] In view of the expression's later history, Benson thinks that this entire *quaestio* may be considered as a short treatise on the concept of *plenitudo potestatis*. In his introduction to the discussion, Gratian asks whether a metropolitan can judge clerics who are the subjects of one of his suffragan bishops, or revoke the judgment of a cleric by the suffragan bishop, without the suffragan bishop even being consulted. He speculates about the relationship between a metropolitan and his suffragan bishops in the province. The details of this discussion need not detain us here, but the discussion itself is important because it is in this *quaestio* 3 of *Causa* 9 in Part II of the *Decretum* that Gratian has gathered together a number of canons to demonstrate that the bishop of Rome has the authority to judge the subjects of any bishop and makes use of the terminology that will, from then on, be used concerning papal power in the Church. He asks if the metropolitan can judge or absolve the clerics referred to here because in fact it is the metropolitan who is called *in plenitudinem potestatis,* whereas the suffragan bishops are called *in partem sollicitudinis* – to share in this solicitude.

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[49] The Council of Sardica (modern Sofia) was convoked around the year 343 by the emperors mainly to settle the question of the orthodoxy of St Athanasius of Alexandria who had been deposed. It confirmed the orthodoxy of Athanasius but made no dogmatic declarations. It also passed twenty disciplinary canons, among which canons 3, 4 and 5 describe the right of appeal for bishops, constituting the bishop of Rome as a court of appeal in certain circumstances. However, Sardica was mainly a meeting of Western bishops and its canons were not fully accepted by the Eastern Churches. Patriarch Photios, for example, in his letter to Pope Nicholas I in 861 stated that the canons of Sardica were not recognized in the tradition of the Byzantine Church. They were, however, included in Greek canonical collections and were often attributed to the Council of Nicaea. Canon 3 of this council lays down that if a bishop wishes to appeal against a judgment then, honouring the memory of Peter the Apostle, 'he may write to Julius the bishop of Rome', who may appoint bishops from the neighbouring province to settle the case. Balsamon, commenting on this canon, says that what is said of the bishop of Rome in these canons applies also to the patriarch of Constantinople. (RP, vol. III, 234–235). This canon is to be found in the *Decretum* of Gratian, C.6,q.4,c.7. For a discussion of this controversial council, see H. Hess, *The Canons of the Council of Sardica, AD 343* (Oxford 1958).

[50] See R. Benson, 'Plenitudo potestatis, Evolution of a formula', *Studia Gratiana* 14 (1967) 195–217. See also the following texts in Gratian: C.3, q.6, cc.7,8,9; C.2, q.6, c.11 (Gregory IV), c.12 (Pseudo Vigilius).

[51] R. Benson, 'Plenitudo potestatis', 215.

[52] Gratian, C.9, q.3.

First of all, Gratian quotes a few canons which suggest that the metropolitan *can* act without consulting the bishop concerned. However, he goes on to show that the contrary is the case, quoting a number of papal decretals to support this view. It is in this context that he maintains that only the Roman See can deliver judgment on all matters. He states quite clearly: 'Only the Roman church can, by its own authority, judge concerning all'.[53] Benson maintains that it is in this single *quaestio* that Gratian constructed the model for the later theory which defined *plenitudo potestatis* as the universal jurisdiction pertaining to the 'ordinary judge of all' and which characterized the *pars sollicitudinis* as a derivative form of jurisdiction.[54]

The doctrine concerning legislative power in the Church is one of the most important doctrines of canonical ecclesiology and Gratian deals with it in several other parts of the *Decretum.* He maintained that there were a number of sources for ecclesiastical legislation: the canons promulgated by councils, the writings of the Holy Fathers of the Church and papal decretal letters.[55] After a long discussion on the conciliar canons in the history of the Church,[56] Gratian, in Distinction 19, puts together a short treatise on the authority of papal decretal letters. The question he is discussing is this: should these decretal letters be granted the force of legal authority even though they may not be included in the collection of canons?[57] His answer is unequivocally in the affirmative. Papal decretal letters have full authority within the Church and he cites a number of decretals to support this view. All sanctions laid down by the apostolic see of Rome are to be observed without any violation as though they had been confirmed by the divine voice of Peter himself.[58] His conclusion is that decretal letters are to be obeyed in the same way as the canons promulgated by general councils.[59]

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[53] Gratian, C.9, q.3, d.p.c.9: 'Sola enim Romana ecclesia sua auctoritate valet de omnibus iudicare; de ea vero nulli iudicare permittitur'.('Only the Roman Church by its own authority can be judge about everything; but no one is permitted to judge the Roman Church').

[54] 'Yet the substance and the technical language of his argument provided the principal components with which the decretists would create the later doctrine of papal *plenitudo potestatis*'. Benson, 'Plenitudo potestatis', 217. See also J. A. Watt, 'The Use of the Term Plenitudo Potestatis by Hostiensis', *Proceedings of the Second International Congress of Medieval Canon Law* (Vatican 1965), 161–187.

[55] See Gratian, D.15, where Gratian, having already dealt with natural law and customs, goes on to consider the origin and the authority of ecclesiastical constitutions.

[56] Gratian, DD.16, 17 and 18.

[57] Gratian, D.19, d.a.c.1.

[58] Gratian, D.19, canon 2 (of Pope Agatho): 'Sic omnes apostolicae sedis sanctiones accipiendae sunt, tamquam ipsius voce divini Petri firmatae'.

[59] Gratian, D.20, d.a.c.1: 'Decretales itaque epistolae canonibus conciliorum pari iure exsequantur.' (thus decretal letters are to be carried out with the same authority as the canons of the councils').

This same teaching is put forward very clearly in his treatise on the nature and authority of privileges in Part II of the *Decretum.*[60] It is important to bear in mind that Gratian compiled his *Concordia* at a time when the Investiture Controversy was still fresh in everybody's mind. This had been resolved by the Concordat of Worms as recently as 1122, and Gratian would have been working on his *Decretum* only a few years after this. A canonist could not but be affected by this long controversy that had gone on between pope and emperor since 1075. The development of canon law in the West was greatly influenced by the arrangement and re-arrangement of canonical texts to back up the various points of view in the controversy. Both sides looked for support in the law. They searched the archives and selected their texts accordingly. There are many canons in the *Decretum* that could be quoted to illustrate Gratian's very definite views on the bishop of Rome as the supreme legislator and the Church of Rome as the head that must be obeyed by all.[61] It is clear that he selected his canons carefully with this in mind.

The sources from which Gratian took his canons were mainly sources that had been compiled during the period of the Gregorian Reform and in support of the Reform movement. From a detailed examination of the *Concordia* scholars have concluded that the following canonical collections constituted the immediate working library for Gratian as he compiled his collection.[62] The *Collectio canonum* of Anselm of Lucca, compiled for Pope Gregory VII around 1083;[63] the *Polycarpus* of Cardinal Gregory of St Grisogono, compiled in Rome after 1111;[64] the *Panormia* of Ivo of Chartres (c. 1095–1115); The Pseudo-Ivonian *Collectio Tripartita* (1095); the *Collection in Three Books,*[65] and the *Liber de Misericordia et Iustitia* by Alger of Liège.[66] All of these were supporters of the

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[60] Gratian, C.25, q.2, cc.1–26; but see also C.25, q.1, d.p.c.16.

[61] See Gratian, D.21, d.a.c.1; D.22, c.2; D.12, cc.1–2; D.19, c.1; D.22, c.1; C.25, q.1, d.p.c.16: 'Sacrosancta Romana Ecclesia ius et auctoritatem sacris canonibus impertit, sed non eis alligatur' ('The most holy Roman Church imparts to the sacred canons their binding force and authority, but she is not bound by them'). See Y. Congar, *L'Église de Saint Augustin*, 145–147. B. Tierney, *Foundations of the Conciliar Theory. The Contribution of the Medieval Canonists from Gratian to the Great Schism*, esp. 26–27.

[62] See P. Landau on 'Gratien' in *Theologische Realenzyklopädie*, 14 (1985), 125–126. See also the important study by C. Munier, *Les sources patristiques du droit de l'Église*, 123–204.

[63] This was an important instrument in promoting the Gregorian Reform and enjoyed wide popularity. 'The collection was a main source through which the False Decretals were popularized in Italy and beyond'. J. Gilchrist in NCE, vol. 1, 585. On this collection there is a well-documented book by Kathleen G. Cushing, *Papacy and Law in the Gregorian Revolution. The Canonistic Work of Anselm of Lucca* (Oxford 1998).

[64] J. Gaudemet, *Les Sources du Droit de l'Église en Occident du VIIIe Siècle au XX Siècle* (Paris 1993), 98; Winroth, *Making of Gratian's Decretum*, 16.

[65] See J. Gaudemet, *Les Sources*, 98. J. Erickson, 'The Collection in Three Books and Gratian's Decretum', BMCL, 2, 1972, 67–75.

[66] PL, vol. 180, cols 857ff. This was composed about 1105 and is not so much a canonical collection as a treatise on how the rigour of justice should be tempered with mercy. Gratian was

approach of the Gregorian Reformers.[67] These were his canonical sources. He also used non-canonical sources such as the *Glossa Ordinaria* to the Bible[68] and the *Etymologiae* of St Isidore of Seville, especially for his treatise on law at the beginning of the *Decretum*.

Gratian, therefore, inherited from his sources and developed a canonistic tradition which embodied a particular ecclesiology. In adopting this approach he in fact laid a solid legal foundation for the papal policy that would be followed and developed by Pope Innocent III and later by Pope Innocent IV, who went so far as to depose Emperor Frederick II in 1245 at the Council of Lyons. When Pope Alexander III (1159–81) wanted to affirm the complete freedom of the Church and the independence of the papacy and the obligation of all secular rulers, including the emperor, to obey the pope, it was to the *Decretum Gratiani* that he turned for canonical confirmation.[69] It was not long after Gratian's time, and still in the twelfth century, that the doctrine became common according to which a papal decretal could prevail over the canons – *decretalis praevalet canoni.*[70]

It should be remembered, however, that Gratian added some interesting qualifications in his discussion of papal decretals and the supreme power of the Roman Pontiff. This was not to be taken as absolute power. Papal decretals are to be obeyed, but Gratian adds an important proviso: 'This, however, is to be understood concerning those sanctions or decretal letters in which there is nothing that goes against either the decrees of the Fathers who have gone before or the Gospel precepts'.[71] Gratian also included another canon which would become a locus for canonistic discussion for centuries. He propounded very clearly that the pope is supreme judge and can be judged by no one, but an important clause is added – unless he is found to be erroneous in the faith, *nisi sit*

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influenced by Alger both in his collecting of texts and in his method. See A. Stickler, *Historia Iuris Canonici*, 192–193.

[67] S. Kuttner, 'Research on Gratian: Acta and Agenda', *Proceedings of the Seventh International Congress of Medieval Canon Law* (Vatican 1988), 4–26; S. Chodorow, 'Ideology and Canon Law in the Crisis of 1111', *Proceedings of the Fourth International Congress of Medieval Canon Law* (Vatican 1976), 55–80.

[68] The *Glossa Ordinaria* became the standard commentary on the Bible for the twelfth century. 'Anselm of Laon and his assistants compiled the *Glossa* from the writings of the Fathers, probably making use of existing *florilegia* as their starting-point'. B. Smalley, *The Study of the Bible in the Middle Ages* (Oxford 1952), 366–367. R. Southern has pointed out that 'in his personal *dicta* Gratian shows a full knowledge of every part of the Bible'. *Scholastic Humanism*, 289. See F. Germovnik, *Index biblicus ad Decretum Gratiani* (Illinois 1971).

[69] See M. Pacaut, *Alexandre III* (Paris 1956), 318–344.

[70] See J. Rambaut, *L'Age Classique*, 133.

[71] Gratian, D.19, d.p.c.7: 'Hoc autem intelligendum est de illis sanctionibus vel decretalibus epistolis, in quibus nec precedentium Patrum decretis, nec evangelicis preceptis aliquid contrarium invenitur'.

a fide devius.[72] What if the pope were guilty of heresy or other notorious crimes? Gratian did not discuss this but his commentators did at great length.[73]

It is important to bear in mind that more than a quarter of the *auctoritates* included by Gratian in the *Decretum* are in fact taken from papal decretals.[74] For the Latin Church of the West, right from the time of Dionysius in the sixth century, one of the principal sources of canon law was to be found in papal decretal letters. This explains the success of the Pseudo-Isidorian Decretals in the ninth century. But well before that time, the discipline in the Latin Church had come to be directed more and more by papal letters and less and less by conciliar canons.[75]

> In the history of the Church's legal, constitutional, and even political thought, in the history of the Church's institutional structures as well, a single line of development begins with the jurisprudential tradition which emerged in the canonical collections of the Gregorian Age, and runs with unbroken continuity to its culmination in the juristic papacy of Innocent III and Innocent IV. *Magister Gratianus* contributed massively to this process. Both in the spirit and in the detailed substance of his thought, he belongs to this evolution and occupies a central place.[76]

In the period immediately following the publication of the *Decretum* a number of able and energetic popes took advantage of the clear conception of papal authority made current by Gratian, and embarked on a course of intense legislative activity. Alexander III, Innocent III, Gregory IX and Innocent IV produced, in the century following Gratian, the vast volume of decretal legislation that became the main source of law in the Church. For the rest of the Middle Ages the law of the Church and the law made or sanctioned by the papacy are to all intents and purposes one and the same thing. The *ius commune* had become,

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[72] Gratian, D.40, c.6.

[73] In a very famous passage Huguccio discusses this. D.40, c.6 s.v.*a fide devius.* See W. P. Müller, *Huguccio. The Life, Works, and Thought of a Twelfth-Century Jurist* (Washington 1994), 16; see also Tierney, *Foundations of the Conciliar Theory,* 53–57 and 227–228 (for Huguccio's gloss on 'nisi deprehendatur a fide devius'*)*.

[74] This can be seen at a glance in the lists provided by A. Friedberg in the *Prolegomena* to his edition of Gratian's *Decretum*, cols XXV–XXXVI.

[75] A similar comment could be made about the imperial constitutions in the Byzantine Empire at this time. The imperial constitutions *(Novellae)* were a primary source of church law in Constantinople.

[76] R. Benson in a review of Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: the Ecclesiology of Gratian's Decretum* (Berkeley 1972), in *Speculum* 50 (1975) 97–106. Benson does not think that Chodorow has proved his thesis about Gratian belonging to Haimeric's party and was thus one of the new reformers opposed to the Gregorian tradition. According to Benson, Gratian stands firmly in the tradition from Gregory VII to Innocent IV.

almost exclusively, the *ius decretalium Romanorum Pontificum, ius pontificium* – Papal Law.[77]

Clerical Celibacy in Gratian

As was seen in Chapter Two, one of the aims of the producers of the False Decretals was to strengthen the law on clerical celibacy.[78] In the tenth and eleventh centuries, however, there was a general breakdown of clerical celibacy. Many priests were married or kept concubines. This is clear from many Western regional councils of that period which continuously legislated against clerical marriage. In places monastic enclosure seems to have been abandoned. The law on clerical celibacy was not universally observed and attempts at reform met with fierce resistance.[79]

As we have seen, the drive for a celibate clergy formed a central part of the Gregorian Reform movement in the eleventh and twelfth centuries. The attempt to eradicate clerical marriage was begun by Pope Leo IX (1048–1054). At the Easter Synod in Rome of 1049 celibacy was laid down as a requirement from all clergy from the rank of subdeacon upwards.[80] In carrying out his programme of reform, Pope Leo IX had at his side able and zealous advisers in Hildebrand, who in 1073 was elected pope (Gregory VII 1073–1085) and gave his name to the reform movement, the rigorous reformer, Cardinal Humbert of Silva Candida (d. 1061)[81] and St Peter Damian (1107–1072).[82] The reform movement

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[77] This is clearly demonstrated by the fact that Part II of the *Corpus Iuris Canonici* is almost entirely decretal legislation: the *Decretals of Gregory IX* (1234), the *Liber Sextus* (1298) of Boniface VIII and the *Clementinae*, promulgated by John XXII in 1317.

[78] See above, pp. 66–69.

[79] G. Duby, *The Knight, the Lady and the Priest* (London 1983). Referring to the fight against married priests in the eleventh century, Duby writes: 'But it was a hard struggle. The battle was already raging in 1031 in northern France when the Council of Bourges excluded the sons of priests from religious orders, forbade young women to be given in marriage to priests or deacons or the sons of either, and barred anyone from marrying the daughter of a priest or deacon's wife.Thirty years later the bishops meeting at Lisieux were still telling canons that they must dismiss their female companions; but they were so discouraged that they let their country priests keep theirs'. *The Knight, the Lady*, 116–117. See also Christopher Brooke, *The Medieval Idea of Marriage*, Oxford 1989, 63–77.

[80] In April 1049 the newly-elected Pope Leo IX held a synod in the Lateran at which clerical marriage or concubinage was condemned. Synods were repeated in Italy, Germany and France with the same reforming purpose.

[81] Cardinal Humbert of Silva Candida was not only a rigorous reformer in the Latin Church; he also has come down in history as the person who formally began the schism between Rome and Constantinople. In 1054 he was sent to Constantinople as a delegate of Pope Leo IX. Discussions between the cardinal and the patriarch broke down with Humbert dramatically placing on the altar of Hagia Sophia a bull of excommunication against the patriarch and his followers. The patriarch, Michael Keroulaios returned the compliment with an anathema against the cardinal. It was a per-

was carried forward by Roman synods under Pope Nicholas II in 1059 and under Pope Gregory VII in 1074. From Pope Gregory VII's many letters to the German bishops it is clear that clerical concubinage was widespread in Germany in the eleventh century. In fact there had grown up an 'established custom of clerical marriage'.[83] 'In the early Middle Ages members of the clergy married. The law forbade it; custom, in a fashion, sanctified their unions'.[84] Under the Gregorian Reformers, married clergy were offered the choice of separation from their wives or suspension and loss of their benefices. There was great resistance in Germany and elsewhere to Gregory's reform programme and especially against his demand for celibacy from those in major orders.[85] Efforts were made by church authorities to mobilize public opinion behind the decrees, by forbidding lay people to attend masses celebrated by priests who cohabited with women. It was still open for a priest to retain his wife and forfeit his benefice, but after the decrees of the twelfth-century Lateran Councils even this was no longer permissible. The First Lateran Council in 1123 enacted the following canon:

> We absolutely forbid priests, deacons, subdeacons and monks to have concubines or to contract a marriage. We adjudge, as the sacred canons have laid down, that marriage contracts between such persons should be broken up and the persons must undergo penance.[86]

This is included in Part I of the *Decretum,* in Distinction 27, canon 8, but Gratian does not state that it was a canon of the Lateran Council; he simply attrib-

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sonal quarrel between two arrogant and highly irascible prelates and did not bind either of the Churches. In fact, Pope Leo IX had died before Humbert issued his decree of excommunication. However, the date 1054 has been commonly taken as marking the formal break between Rome and Constantinople, which has never since been healed.

[82] Peter Damian became famous as a preacher against the worldliness of the clergy. As Cardinal Bishop of Ostia, he played a prominent part in the work of ecclesiastical reform. He felt compelled to permit marriage, for otherwise the human race would die out. 'Yet the sexual act was the essence of everything abhorrent to Damian'. C. Brooke, *The Medieval Idea of Marriage,* 73.

[83] 'For both theological and practical reasons, clerical simony and clerical marriage and fornication were resisted by virtually all those who in the later eleventh century sought the renewal of Christianity and the raising of the standards of the Christian life. Gregory's commitment to their extirpation, both before and after his elevation to the papal office, is beyond question'. H. E. J. Cowdrey, *Pope Gregory VII* (Oxford 1998), 242.

[84] C. Brooke, *The Medieval Idea of Marriage,* 64.

[85] See Cowdrey, *Pope Gregory VII,* 21, 245, 550–553. Gregory VII wrote to the bishop of Paris in 1077, asking him to investigate 'the fate of a priest of Cambrai, Ramihard, who was said to have been burned alive for preaching that unchaste priests should not say Mass but should be boycotted by the laity'. 412. See also Anne Llewellyn Barstow, *Married Priests and the Reforming Papacy: the Eleventh-Century Debate. Texts and Studies in Religion,* vol. 12 (New York 1982). Barstow maintains that until the twelfth century the majority of the secular clergy in the West were married.

[86] First Lateran Council (1123), canon 21. DEC, vol. I, 194.

utes it to Pope Calixtus II. It was not clear from this canon if the marriage contracted by these clerics should be judged invalid or not. The canon uses the word *disiungi*, which means to separate or break up: – *contracta quoque matrimonia ab huiusmodi personis disiungi et personas ad poenitentiam debere redigi.* However, the doubt was resolved sixteen years later, at the Second Lateran Council (1139) which enacted the following canons:

> We also decree that those in orders of subdeacon and above who have taken wives or concubines are to be deprived of their position and ecclesiastical benefice. For since they ought to be in fact and in name temples of God, vessels of the Lord and sanctuaries of the Holy Spirit, it is unbecoming that they give themselves up to the marriage-bed and impurity (*indignum est eos cubilibus et immunditiis deservire*).[87]

> Adhering to the path trod by our predecessors, the Roman pontiffs Gregory VII, Urban and Paschal, we prescribe that nobody is to hear the Masses of those whom he knows to have wives or concubines. Indeed that the law of continence and the purity pleasing to God might be propagated among ecclesiastical persons and those in holy orders, we decree that where bishops, priests, deacons, canons regular, monks and professed lay brothers have presumed to take wives and transgress this holy precept, they are to be separated from their partners. *For we do not deem there to be a marriage which, it is certain, has been contracted against ecclesiastical law.*[88] Furthermore, when they have separated from each other, let them do a penance commensurate with such outrageous behaviour (*tantis excessibus*).[89]

By this canon the Latin Church's legislation on clerical celibacy was complete. The reception of Holy Orders had been made a 'diriment' impediment for matrimony, as it still is to this day in the Latin Church and in the Eastern Catholic Churches.[90] There had been widespread acceptance of clerical marriage and these decrees met with much opposition from the clergy in Germany and France. Nor did they succeed at once in establishing a celibate clergy everywhere; there is plenty of evidence to show that in the thirteenth century a significant number of the parish clergy still lived with women and that their wives and children were an accepted part of village society.[91] In the *Decretum*, how-

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[87] Second Lateran Council (1139) canon 6. DEC, vol. I, 198. It is included in Gratian, D.28, c.2

[88] 'Huiusmodi namque copulationem, quam contra ecclesiasticam regulam constat esse contractam, matrimonium non esse censemus'. Second Lateran Council, canon 7. DEC, vol. I, 198.

[89] Gratian has included this canon in Part II of the *Decretum,* C.27, q.1, c.40. He attributes it simply to Pope Innocent II.

[90] CIC, canon 1087: 'Those who are in sacred orders *invalidly* attempt marriage'. The same law obtains for the Eastern Catholic Churches: CCEO, canon 804.

[91] 'In England the ruling of Archbishop Lanfranc applied the full rigour only to canons and allowed mitigation in favour of those clergy who were already married. This compromise was not merely human, but inevitable, and it was followed elsewhere. But gradually the screw was tightened. Among the higher clergy at least, marriage or regular concubinage had been almost elimi-

ever, it is clear that Gratian was in full agreement with the Reform Movement's insistence on the strict observance throughout the Western Church of clerical celibacy and the legislation to which I have been referring. He collected in the *Decretum* many authoritative prohibitions of clerical marriage, including the celibacy decree of the Second Lateran Council and warned that clerics in holy orders who kept wives or concubines were subject to dismissal from their posts and degradation from the clerical state.[92] He included the warning of the Roman Synod of 1063 that had forbidden the laity to attend Mass or other services conducted by married or concubinary priests. Gratian's comment on this decree is that it was issued, not because the Holy Mass celebrated by such priests would be considered invalid, but to shame such priests into doing penance and observing celibacy: 'because priests of this kind, when they have seen themselves despised by the people, blushing with shame, they may more easily be urged to penance'.[93] He included Pope Gregory VII's condemnation of bishops who failed to enforce the celibacy rule. Such bishops are to be suspended from office.[94] In fact the *Decretum* contains a virtual handbook of decrees and decisions supporting the Reformers' teaching on celibacy. He included those canons we have already seen from earlier provincial councils in Spain that stipulated the penalty of enslavement for the mistresses and children of clerics in sacred orders.[95]

Such penalties sound severe and grossly unjust to modern ears, but Gratian included these canons because he was clearly in agreement with the view that the violation of the obligation of celibacy demanded severe punishment. The cleric convicted of the sin of adultery could lose his ecclesiastical office and

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nated by the end of the twelfth century. But at parish level it proved much harder to eradicate and enforcement of the law was never completely successful. We shall not understand the problem if we think of it in terms of a simple conflict between strict obedience and laxity. In the twelfth century there were clerical families who stood high in the esteem of their neighbours and instilled a profound piety in their own children. The Cistercian writer, St Ailred of Rievaux, was a child of a long line of married priests who had lands and high social connections in Northumberland. His father, Eilaf, priest of Hexham, held a leading position among the gentry of Tynedale; at least two of his children entered the religious life and he himself, after his wife's death, ended his days as a monk of Durham. Families like this explain the widespread acceptance of clerical marriage and the formidable difficulties that the new legislation had to surmount.' C. E. Lawrence in 'Origins of Clerical Celibacy,' *Clergy Review* (1975), 143.

[92] Gratian, D.32,c.10, 11.

[93] Gratian, D.32, d.p.c.6: 'Sed quia, dum huiusmodi sacerdotes se a populo contemptos viderint, rubore verecundiae facilius ad penitentiam provocantur'.

[94] Gratian, D.83, c.1. See also D.32, c.6, c.10.

[95] Gratian, C.15, q.8, c.3, from the Ninth Council of Toledo (655 AD), can. 10: 'proles autem aliena pollutione nata, non solum hereditatem numquam accipiet, sed etiam in servitute eius ecclesiae, de cuius sacerdotis vel ministri ignominia nati sunt, iure perhenni manebunt'. See also D.81, c.30 (The Fourth Council of Toledo, 633 AD, canons 42–43.)

could expect confinement in a monastery for the remainder of his life.[96] For clerics involved in long-term relationships – married or concubinary – the penalty also included degradation from holy orders. What about men who were married or had a concubine, could they become priests? Yes, provided that their wives or concubines had died or agreed to separation.[97] However, a man who had married twice, or who had married a widow or whose wife had committed adultery was barred from ordination.

What, we may ask, were the motives behind this pressure for clerical celibacy in the Western Church? There were, in fact, a variety of motives at work. There was the spiritual motive of having a clergy who would be single-minded in their dedication to Christ and to his ministry. The monastic life and literature did much to propagate the ideal of virginity and to associate this in people's minds with full Christian commitment. There was also the eschatological motive. In heaven they would be like angels, neither marrying nor giving in marriage. Gratian thought that the obligation of celibacy freed the clergy to devote themselves to prayer. Clerical celibacy also encouraged the idea that the priest was 'a man apart', liberated from the worldly preoccupations of lay life. There were other factors too. The language of a number of the canons quoted above is the language of ritual or cultic purity, which is thought by many to have been a principal factor in the fourth century and later.[98] These canons also betray a very negative view of sexual intercourse as something altogether too passionate and also unclean, even within the context of sacramental marriage. There was also the economic concern with regard to church property and inheritance which would not have been absent from the minds of church authorities. A celibate clergy ensured that ecclesiastical benefices did not slip away into the inheritance of a married cleric's heirs. At any rate, Gratian's *Decretum* provides a vivid picture of how the Latin Church legislated concerning clerical celibacy in the twelfth century and in the centuries leading up to his time. In general, the Gregorian Reform was largely, if not completely, successful in restoring the observance of clerical celibacy in the West and Gratian included in his *Decretum* much of the legislation that was instrumental in that restoration.

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[96] D.81, c.10: 'If any cleric confesses that he has committed adultery, or is convicted of having done so, he is to be deposed from his office and while being granted communion he is to be forced to live in a monastery for the rest of his days'. ('Si quis clericus adulterasse aut confessus fuerit, aut convictus, depositus ab offitio communione concessa in monaterio *toto vitae suae tempore* trudatur'). (Seventh Synod of Orleans, can. 7).

[97] Gratian D.33, c.6–7 (from letters of Innocent I and Gregory the Great).

[98] See Paul Beaudette, '"In the World but not of It": Clerical Celibacy as a Symbol of the Medieval Church', in *Medieval Purity and Piety*, edited by Michael Frassetto (New York and London 1998), 23–46. Also Roger Gryson, *Les Origines du Célibat Ecclésiastique*, (Gembloux 1970).

Marriage Legislation in Gratian

The final ten *Causae* dealt with in Part II of the *Decretum* – *Causae* 27–36 are concerned with matrimonial problems and constitute what can rightly be called a treatise on marriage, in which a great variety of problems are discussed in detail.[99] For example, what constitutes marriage? Is it consent? Is sexual intercourse essential to the constitution of the marriage bond? Is marriage a sacrament? If it is, what does its sacramental character imply for problems concerning divorce and re-marriage? How does concubinage differ from marriage? What rights did a concubine have? Is a clandestine marriage regarded as a real marriage in law or not? The list of questions is long and the legal problems they give rise to are serious, not only for the individuals involved in the various situations, but also for the Church and for society at large. Gratian discusses these and many other related questions at great length and the answers that he put forward were very influential in shaping both law and practice during and beyond the twelfth century. It is not my purpose here to discuss Gratian's teaching on marriage in general. There are many fine studies of this readily available.[100] I limit myself to several points on which the Greek and Latin Churches differ: the nature of the marriage bond and the possibility of re-marriage after divorce.

Towards the beginning of his treatment of marriage, Gratian quotes with clear approval Ulpian's definition of marriage from Justinian's *Institutes:* 'Matrimony is the union of a man and a woman maintaining an undivided pattern of living.'[101] There were, however, two schools of thought in mid-twelfth century about what precisely brings the bond of marriage into existence. Towards the beginning of his treatment of marriage Gratian poses the question about the nature of matrimonial consent: is it consent to live together or consent to have sexual relations, or both?[102] There were those who maintained that marriage fully came into being by the consent of the parties to live as man and wife; once this mutual consent had been given, then the marriage was a fact.[103] Others

[99] In the *Decretum* there are around 396 canons on marriage, more than 10% of the whole collection. Of these 396 'canons', 167 are patristic texts. See Charles Munier, *Les sources patristiques du droit de l'Église,* 149.

[100] For a full discussion of these questions, see J. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago and London 1987), 229–255. Also Colin Morris, *The Papal Monarchy,* 327–333.

[101] Gratian, C.27, q.2 'Sunt enim nuptiae sive matrimonium viri mulierisque coniunctio individuam vitae consuetudinem retinens. C.29, q.1: Coniugium sive matrimonium est viri et mulieris coniunctio, individuam vitae consuetudinem retinens. Item consensus utriusque matrimonium facit. Quia ergo isti coniuncti sunt, ut individuam vitae consuetudinem conservarent, quia uterque consensit in alterum, coniuges sunt appellandi'.

[102] Gratian, C.27, q.2, d.p.c.2.

[103] This opinion that marriage is formed by consent (and not consummation) was the position adopted by Peter Lombard in Paris in his *Libri Sententiarum:* 'consensus cohabitationis, vel car-

held that marriage was not fully constituted until the consent was completed by sexual intercourse. The conflict of views can be seen in the following quotations attributed to the Fathers:[104] *Matrimonium non facit coitus sed voluntas* ('it is the will, not sexual intercourse that makes a marriage'), attributed by Gratian to St John Chrysostom, and *Non defloratio virginitatis, sed pactio coniugalis matrimonium facit* ('It is not the deflowering of virginity, but the conjugal pact that makes a marriage'), attributed to St Ambrose. From such statements as these it is clear that it is conjugal consent that forms the marriage. On the other hand, there were patristic authorities which stressed the importance of sexual intercourse: *illa mulier non pertineat ad matrimonium, cum qua docetur non fuisse commixtio sexus* ('that woman is not married with whom it is proved there has not been sexual intercourse'), attributed to St Augustine.[105] Gratian adhered to the second school of thought. He held that physical consummation played an essential role in bringing about the marriage bond but he put forward his own particular approach to the question, and had followers among the twelfth-century decretists of Bologna.

This diversity of views gives rise to serious difficulties.[106] If a couple are not truly married until their first act of sexual intercourse, then in what sense can Mary and Joseph be said to have been truly married? And if consent alone, without any reference to sexual intercourse, is sufficient fully to constitute marriage, then a brother and a sister could marry each other. Here, as elsewhere in the *Decretum*, Gratian tried to bring harmony into an apparent discord between the canons. He tried to reconcile the discordant texts by making a distinction between what he called an 'inchoate marriage' – *matrimonium initiatum* – and a ratified and consummated marriage – *matrimonium ratum et consummatum.* When mutual consent between the parties has been given, then a true marriage does come into being, but only as an 'initiated' marriage; it is only when they

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nalis copulae non facit coniugium, sed consensus coniugalis societatis' ('It is not consent to live together or to have carnal union that forms a marriage but the consent to form a conjugal society'). Sent. IV, 28, 3 (PL, 1, vol. 92, col. 915). This was the view of the Paris theologians and canonists in the twelfth century. See W. W. Bassett, *The Bond of Marriage* (Notre Dame 1968), 136. See also J. Brundage, *Law, Sex and Christian Society in Medieval Europe*, 264ff.

[104] Gratian, C.27, q.2, d.p.c.45.

[105] Gratian, C.27, q.2, d.p.c.28.

[106] In fact, some years after Gratian's death Pope Alexander III gave a judgement which decided the controversy in favour of the Paris theory that it is consent that makes the marriage. In the decretal letter, *Veniens ad nos, (Liber Extra,* 4.1.15) issued between 1175 and 1181, he ruled that consent was the essential and deciding element. See James A. Brundage: 'Implied Consent to Intercourse', in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies,* edited by Angeliki E. Laiou (Washington 1993), 248–249. Pope Alexander III did, however, give legal importance to physical consummation. He gave formal approval to the custom that a non-consummated marriage could be dissolved. See T. Mackin, *What is Marriage?* (New York 1982), 169–170. J. A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, 331–337.

have sexual intercourse that the matrimony becomes *ratum.*[107] Gratian does not exclude the need for the spiritual union between the couple. The canons make it clear that true marriage is a spiritual union of the spouses but this spiritual union is strengthened and perfected by sexual union. He further maintains that it is in the *matrimonium ratum* that there is fully realized the sacrament of Christ and the Church. This is the explanation of why a marriage that has not been consummated can be dissolved whereas a *matrimonium ratum et consummatum*, which is a sign of the indissoluble union of Christ and his Church, cannot be dissolved.[108]

By this distinction Gratian tried to resolve a number of problems. His theory made it clear just when a marriage came into being; it was at the moment the parties gave their consent to each other. His theory also gave an important place to sexual intercourse in marriage and provided an explanation of how it was possible for valid, non-consummated marriages to be dissolved. It also permitted one to say that Mary and Joseph were truly married.[109] How did Gratian resolve the difficulty with the statement he quoted from St John Chrysostom: 'It is not intercourse that creates a marriage, but consent that does so'? He gives the following explanation:

> This is to be understood in the following way: intercourse without the intent to contract a marriage, and the deflowering of a virgin without the exchange of consent, do not create a marriage. But an antecedent intent to contract marriage and the exchange of consent has this effect, that in the losing of her virginity, or in her intercourse, a woman is said to marry her husband, or 'to celebrate her marriage'.[110]

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[107] Gratian, C.27, q.2, d.p.c.34: 'unde inter sponsum et sponsam coniugium est, sed initiatum; inter copulatos est coniugium ratum'. See also c.35 and c.36 of this same *quaestio* 2. It should be noted here that Gratian is using the word *ratum* in a sense that differs from the meaning the same word carries in the Latin *Codex Iuris Canonici.* According to the Latin Code, a marriage is *ratum* when both parties are baptized Christians. CIC, canon 1061#1: 'A valid marriage between the baptized is called *ratum tantum* if it has not been consummated; it is called *ratum et consummatum* if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh'.

[108] Gratian, C.27, q.2. d.p.c.39.

[109] 'As to the question how their virginal marriage could be called complete, Gratian found for it another kind of completeness in that it contained all of Augustine's three goods of marriage, *fides, proles, sacramentum'.* Gratian, C.27, q.2, c.10 is a quotation from St Augustine's *De Nuptiis et Concupiscentia* (chapter 11, n. 13): 'Therefore every one of the goods of marriage was fulfilled in these parents of Christ – offspring, fidelity, sacrament'. See Theodore Mackin, *What is Marriage,* 159–162.

[110] 'Coitus sine voluntate contrahendi matrimonium et defloratio virginitatis sine pactione coniugali non facit matrimonium, sed precedens voluntas contrahendi matrimonium et coniugalis pactio facit, ut mulier in defloratione suae virginitatis vel in coitu dicitur nubere viro, vel nuptias celebrare'. C.37, q.2, d.p.c.45. English translation from T. Mackin, *What is Marriage,* 160.

But what exactly does this antecedent intent to contract marriage mean? To what must the parties consent if they are to make a *coniugalis pactio*? What specifically differentiates a conjugal union from any other union? Gratian replied that the parties must consent to having sexual intercourse with each other. But there must be more to it than this since both adulterers and fornicators consent to have intercourse. So what is it that makes intercourse *marital* intercourse? It is the context. Gratian replies that the intercourse is marital if it is done within the context of that undivided way of living that is contained in the definition of marriage he had quoted at the outset of his discussion – 'Matrimony is the union of a man and a woman maintaining an undivided way of living'.[111]

Gratian mentions frequently the notion of marital affection – *coniugalis affectus* – and by this he seems to have meant a habitual attitude of respect, deference, and consideration towards one's spouse that differentiated a marital relationship from casual cohabitation. 'Gratian's discussion of the marital relationship repeatedly emphasised its personal nature. Couples contracted marriage by exchanging consent and consummating it through sexual intercourse, both decidedly personal matters'[112]

On the question of divorce and re-marriage Gratian was unequivocal. A *matrimonium ratum* – that is, a consummated marriage between two baptized Christians, – could never be dissolved, *nullo modo solvi potest.*[113] Since he held that a marriage that had not yet been consummated was incomplete – *matrimonium initiatum* – he maintained that this sort of marriage could be dissolved, provided there was sufficient reason, such as, for example, the desire to make religious profession.[114] Gratian also allowed that, in certain specified circumstances, even a consummated marriage could be declared null. Impotence, the inability to have sexual intercourse and so complete the marriage, would be a cause of nullity.[115] Another ground of nullity would be the case of mistaken identity or error *de persona.* That is, if John thinks he is marrying Mary and in fact the woman he married turns out to be her sister, Elizabeth.[116] This Gratian would accept as null on the ground of mistaken identity. In fact, another case of invalidating error could arise where a heretic had concealed his heretical beliefs

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[111] See C.27, q.2, c.3 (from St Augustine): 'Consensus ergo cohabitationis et individuam vitae consuetudinem interveniens eos coniuges facit'.

[112] J. A. Brundage, *Law, Sex, and Christian Society in Medieval Europe,* 239. See Gratian, D.34, d.p.c.3; C.28, q.1, d.p.c.17; C.32, q.2, d.a.c.6; C.32, q.5, d.p.c.16.

[113] Gratian, C.28, q.2, d.p.c.2. See also C.32, q.7, d.p.c.18: 'Nulla auctoritate permittitur, ut vivente uxore, alia superducatur'. See J. A. Brundage, *Law, Sex, and Christian Society in Medieval Europe,* 240.

[114] Gratian, C.27, q.2, d.p.c.39: 'Illa vero, quibus separabile coniugium ostenditur, de initiato intelliguntur, quod nondum offitio sui perfectum est'.

[115] Gratian, C.33, q.1,c.1 and d.p.c.3.

[116] Gratian, C.29, q.1: 'Error personae est, quando hic putatur esse Virgilius, et ipse est Plato'.

before the marriage and the Catholic party had married him under the mistaken apprehension that he was an orthodox believer, then divorce might be permitted, essentially because the deception amounted to fraud and hence vitiated the consent.[117] Gratian did not think that a marriage should generally be terminated if the impediment of affinity or consanguinity comes to light after the wedding had come into being. Dispensations should be granted to allow the marriage to continue.[118]

Gratian also discusses the case where two pagans marry and one of them subsequently converts to Christianity. Must they stay together or can the marriage be dissolved and the newly baptized Christian be allowed to re-marry? Gratian notes two diverse opinions on the question. St Ambrose observed that baptism wipes away sins but it does not dissolve marriages.[119] St Gregory, however, seems to call for a different approach: if the non-baptized party leaves the Christian party, then the newly-baptized person may remarry.[120] Gratian resolved this conflict of authorities by distinguishing between the situation in which the non-Christian party deserted the Christian spouse and the situation in which the pair continue to cohabit. If the non-Christian leaves the converted Christian, then the abandoned Christian party may remarry. If the couple remained together, however, the Christian party could obtain a separation if this was thought necessary for him or her freely to live according to the Christian faith. Gratian would not countenance re-marriage during the lifetime of the other partner.[121] He was aware that many early authorities had allowed divorce on grounds of adultery, but he did not agree.[122] In divorce actions based on adultery, a husband who was guilty of adultery could not bring charges of adultery against his unfaithful wife.[123] Even where he would allow separation on grounds of adultery, Gratian held that re-marriage of neither party should be allowed. Those who divorced because of the adultery of the other party must remain unmarried as long as the first spouse lived.[124] Gratian frequently refers to the clause in the Gospel of Matthew, 'unless it be for fornication,'[125] but he never interprets this as granting permission to marry again while the first spouse

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[117] Gratian, C.29 q.1, pr: 'Quia ergo haec persona decepta errore non in hunc, sed in eum, quem iste se mentiebatur esse, consentit, patet quod eius coniunx non fuerit'.

[118] Gratian, C.35, q.8, pr.; q.9 d.p.c.2; more generally: C.1 q 7 d.p.c.5 and cc.14–17.

[119] Gratian,C.28, q.2,c.2: 'Crimina in baptismo solvuntur, non coniugia'.

[120] Gratian, C.28, q.2, c.2: 'Non est enim peccatum dimisso propter Deum, si alii se copulaverit'.

[121] Gratian, C.28, q.2, d.p.c.2. This is an important statement by Gratian in which he refuses to permit a second marriage while the first spouse is alive. See the commentary by Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 244.

[122] Gratian, C.32 q. 5 cc.18–22; C.32 q. 7, c.10

[123] Gratian, C.32 q.6 c.1 and d.p.c.5

[124] Gratian, C.27 q.2 d.p.c.32; C.32 q.7 cc.1–10, d.p.c.16; d.p.c.18.

[125] Mt 5:32: 'But I say to you that everyone who divorces his wife, except on the grounds of unchastity, makes her an adulteress; and whoever marries a divorced woman commits adultery.'

is still alive. In this matter he did not accept the approach of the Eastern Churches. 'As long as life lasts a certain conjugal bond remains, which neither separation nor coupling with another can destroy; just as the apostate soul, withdrawing so to speak, from marriage to Christ, even when it has lost its faith does not lose the sacrament of faith which it received in the font of regeneration'.[126]

Mixed Marriages in Gratian

There are a number of canons in the *Decretum* that forbid mixed marriages. Gratian includes the first sentence of canon 14 from the Council of Chalcedon, forbidding readers and psalmists from taking wives who belong to another sect: 'Since in certain provinces it is permitted to the readers and the singers to marry, the holy Synod has decreed that it shall not be lawful for any of them to take a wife that is heterodox'.[127] He states in his own commentary on the canons that the faithful may not marry infidels,[128] and includes a number of canons by which Christians were forbidden to marry Jews or heretics, unless these persons promised to convert to Christianity: 'Take care, O Christian, not to give your daughter in marriage to a gentile or a Jew'.[129] 'There ought not to be mixed marriages with any heretics, nor should sons or daughters be given for these; they can however be accepted if they promise to become Christians and Catholics'.[130] 'If any one be joined in conjugal society to the Jewish depravity, whether it be a Christian woman with a Jewish man, or it be a Jewish wife who is joined in carnal congress with a Christian man, whoever of these is discovered to have committed such a shocking crime is to be removed forthwith from the Christian community and from ecclesial communion'.[131] The same prohibition is found in a number of other local Western councils of the sixth century. Church authorities disapproved of marriages between Christians and Saracens or other non-Christians. 'The evidence suggests, however, that such unions sometimes did take place, particularly in the Crusader kingdoms of the Levant and in Spain. Although no law at this point forbade Latin Catholics to marry

[126] C. Morris, *The Papal Monarchy,* 330, translating Gratian, C.32, q.7, c.28, attributed to St Augustine, *De bono coniugali.*

[127] Gratian, D.32, c.15. DEC, vol. I, 93–94.

[128] Gratian, C.28, q.1, d.a.c.15.

[129] Gratian, C.28, q.1, c.15: (attributed to St Ambrose).

[130] Gratian, C.28, q.1, c.16.

[131] Gratian, C.28, q.1, c.17: 'Si quis Iudaicae pravitati coniugali societate iungatur, sive Christiana Iudaeo, sive Iudaea Christiano mulier carnali consortio misceatur, quicumque eorum tantum nefas admisisse cognoscitur, a Christiano cetu atque convivio, et a communione ecclesiae protinus segregatur'.

Byzantine and other Eastern Christians, many contemporaries disapproved of these unions also'.[132]

Conclusion

To return to the question I raised at the beginning of this chapter: how is the changing relationship between Rome and Constantinople reflected in the *Decretum Gratiani?* First of all, it has been seen how Gratian consolidated a firm foundation for the supreme jurisdiction of the Roman See and for a highly centralized government of the Church. This might lead one to think that there is no place for the Eastern patriarchs in his scheme of things, and indeed there does not seem to be much. However, Gratian does in fact have something to say on the subject of the pentarchy and his remarks are interesting. In Distinction 22, where he is affirming unequivocally the primacy of the Roman See, he also quotes a number of the ancient conciliar canons which grant Constantinople the second place after the bishop of Rome. To this effect he transcribes canon 36 of the Council *in Trullo* which enacted that Constantinople should be given second place after Rome.[133] He also cites canon 21 of the Fourth Council of Constantinople (869 AD) which forbade offences against any of the five patriarchs.[134] In this section there is no hint that Rome and Constantinople are in a state of schism.

The common basis even today for the law of the Orthodox Churches is to be found in the 'sacred canons' that were listed in the second canon of the Council *in Trullo* in 692. These *sacri canones* were confirmed by the Second Council of Nicaea in 787,[135] and were declared by that same council to be those canons which were handed down from the Apostles and those which come to us from 'the six holy and universal synods and the regional councils' as well as 'from

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[132] J. A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, 196. Brundage states that canon 15 of the 'Concordat of Nablus' (1120 AD in Palestine) decreed that male Saracens who married Latin women should be castrated.

[133] In Distinction 22, Gratian is stressing that the Church of Rome holds the primacy. Of this there can be no doubt and he cites canons from several popes to demonstrate this primacy. However, he also has room for the five patriarchs, quoting in D.22, c.6, canon 36 of the Trullan Synod of 691: 'Renewing the decrees of the holy Council of Constantinople (381) we ask *(petimus*, the original is *decernimus* – we decree) that the see of Constantinople have similar privileges to those of the see of the older Rome'. Gratian has a modified version of canon 3 of Constantinople I, but he does give the part that puts Constantinople in the second place after Rome and before Alexandria, Antioch and Jerusalem.

[134] Gratian, D.22, c.7.

[135] Council of Nicaea II (787), canon 1: 'We joyfully embrace the sacred canons and we maintain complete and unshaken their regulation, both those expounded by those trumpets of the Spirit, the apostles worthy of all praise, and those from the six holy universal synods'. DEC, vol. I, 138–139.

our Holy Fathers'. What part did these *sacri canones* have in the *Concordia Discordantium Canonum* of Gratian? These canons are listed as the juridical authorities for the Church of Constantinople in the second of the 102 canons promulgated by the Council *inTrullo*, and these 'authorities' have been mentioned repeatedly in this book – the 85 *Apostolic Canons*, 367 conciliar canons and 175 canons from the Holy Fathers.[136] What part did these canons play in the compilation of the *Decretum Gratiani*? In fact, Gratian has included only 17 of the *Apostolic Canons,* which is a small proportion of the 85 that were included in all the Eastern collections. There was a tendency in the West, ever since the time of Dionysius Exiguus, to regard these canons as apocryphal. However, in Distinction 16 in Part I of the *Decretum* Gratian discusses the question concerning the authority that should be attributed to the *Apostolic Canons.* He begins by stating that there are arguments to suggest that these canons should be rejected as apocryphal. But he goes on to argue that, in spite of this, these canons should be accepted as authoritative. Why? Because, as St Isidore says, these canons have been received by very many and the holy Fathers of the Church have granted them authority: *quoniam perplures eos recipiunt, et sancti Patres eorum sententias synodali auctoritate et inter canonicas posuerunt constitutiones.*[137] Gratian goes on to argue that since Pope Hadrian I received the *Sexta Synodus* (691/692) with its canons, and since the eight holy general councils have been confirmed by the authority of the Roman Pontiffs, and since in both the sixth and the seventh general councils the *Canones Apostolorum* were received and approved as *auctoritates,* clearly these canons cannot simply be rejected as apocryphal.[138] Gratian also included the legislation contained in the canons that had been promulgated by the Eastern councils. Of the 188 canons promulgated by the first seven general councils of the Church Gratian has included eighty. This is less than half the total number, but if one bears in mind that a number of the canons omitted by Gratian dealt with specific problems of a particular time and place (for example, the nine canons of Ephesus against the Nestorians), or are repetitions of other *auctoritates* that are actually included in the *Decretum*, it becomes clear that Gratian included in his *Concordia Discordantium Canonum* substantially the canonical legislation of the first seven general councils. This, therefore, ensured that in substance the *sacri canones* were included in the most important and influential summary of the *ius antiquum* for the Latin Church of the Middle Ages.

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[136] For the text of these *sacri canones,* see G. A. Rhalles and M. Potles, Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων (Athens 1852–1859), vols II–IV. Périclès-Pierre Joannou, *Discipline Générale Antique (iv–ix siècles),* Fonti, Serie II, vol. IX, vols I and II (Rome 1963). PG, vols 137 and 138. For *Trullo*, see G. Nedungatt and M. Featherstone (editors), *The Council in Trullo Revisited* (Rome 1995), 45–185.

[137] Gratian, D.16, c.2.

[138] Gratian, D.16, d.p.c.4: 'Patet quod non sunt inter apocrifa deputandi'. ('It is clear that they cannot be numbered among the apocryphal').

This is, of course, in complete harmony with Gratian's teaching on the sources of law for the Church. In his short treatise on the nature of canon law at the beginning of the *Decretum,* Gratian places the canons of the general councils in the first rank. In canon 2 of Distinction 15, he quotes a passage from Gregory the Great to indicate the importance of the early councils: 'Sicut sancti evangelii quattuor libros, sic quattuor concilia suscipere et venerari me fateor'.[139] Of the canons promulgated by the early regional councils of the East,[140]Gratian includes more than half of these in his *Concordia* (87 out of 166). Again, allowing for repetitions, we can be sure that the substance of this legislation has also been accepted by Gratian. He included all these councils in his sources of canon law and taught that these councils had been confirmed by the authority of the Roman Pontiff. He states that Pope Hadrian I had approved the canons of the Second Council of Nicea,[141] and goes on to give a summary of the important second canon of the Council *in Trullo* which, as we have seen, for the first time in a council, formally and officially listed the principal sources of canon law for the Church – in fact, all the *sacri canones* that we are discussing.[142] It is also clear from Friedberg's analysis of Gratian's sources that he included these *sacri canones* all through the three parts of the *Concordia* and in dealing with all aspects of canonical legislation.[143]

Concerning the canons of the Holy Fathers, Gratian did not have direct access to the original *auctoritates* that he included in his *Decretum.* He used al-

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[139] Gratian, D.15, c.2: 'I accept and venerate the four councils just as I accept and venerate the four books of the holy Gospel'. Justinian had said something very similar earlier in the sixth century, as we have seen in the first chapter of this book: *Novella* 131 (545): On ecclesiastical canons and privileges. Chapter I: 'Θεσπίζομεν τοίνυν, τάξιν νόμων ἐπέχειν τοὺς ἁγίους ἐκκλησιαστικοὺς κανόνας τοὺς ὑπὸ τῶν ἁγίων τεσσάρων συνόδων ἐκτεθέντας ἢ βεβαιωθέντας, τουτέστι τῆς ἐν Νικαίᾳ τῶν τιή καὶ τῆς ἐν Κωνσταντινουπόλει τῶν ἁγίων ρν΄ πατέρων καὶ τῆς ἐν Ἐφέσῳ πρώτης, ἐν ᾗ Νεστορίος κατεκρίθη, καὶ τῆς ἐν Καλχηδόνι, καθ'ἣν Εὐτυχὴς μετὰ Νεστορίου ἀνεθεματίσθη. τῶν γὰρ προειρημένων ἁγίων δ΄ συνόδων καὶ τὰ δόγματα καθάπερ τὰς θείας γραφὰς δεχόμεθα καὶ τοὺς κανόνας ὡς νόμους φυλάττομεν'. ('Therefore we confirm that those holy ecclesiastical rules have the status of law, which were issued or confirmed by the four holy councils; that is, by the 318 fathers at Nicaea, and the 150 holy fathers at Constantinople, and in the first [synod] at Ephesus in which Nestorius was condemned, and at Chalcedon, in which Eutyches was excommunicated along with Nestorius. For we accept the dogmas of the above-mentioned four councils just like Holy Scripture and we keep their canons just like laws'). *Novellae,* 655.

[140] Ancyra, Neocaeserea, Antioch, Sardica, Laodicea and Gangra.

[141] Gratian, D.16, c.5.

[142] Gratian, D.16, c.7 and d.p.c.6: 'Ex his colligitur quod sexta synodus bis congregata est: primo sub Constantino et nullos canones constituit; secundo sub Iustiniano filio eius, et praefatos canones promulgavit'. Gratian had just quoted Peter, bishop of Nicomedia, and Tarasios, who was patriarch of Constantinople at the Second Council of Nicea, and had claimed that the Trullan canons belonged to the Sixth General Council as a supplement, and should be received as authoritative.

[143] A. Friedberg, *Decretum Magistri Gratiani,* xix.

ready existing Western collections and does not seem to have known any Greek collection. It is also important to remember that Gratian very frequently introduces quotations from Holy Scripture and from the writings of the Fathers into his own commentary on the canons, his *dicta ante et post.* Therefore, when studying patristic influence on the *Decretum* and on the development of canon law in the West, it would be a mistake to limit one's study to Gratian's *auctoritates* or *canons.* Charles Munier has provided convincing evidence to show the importance the *Glossa Ordinaria* on the Bible had for Gratian when he was composing his *dicta.* It provided him with a large number of scriptural texts and patristic comments on these texts. Gratian quotes more than 500 texts from Holy Scripture and more than 400 passages from the writings of the Fathers to explain these scriptural quotations.[144]

His long *dictum* after canon 7 of D. 37, which we have discussed above, can be taken as a good example of just how heavily he relied on the *Glossa Ordinaria.*[145] For Gratian, as for his twelfth-century contemporaries in general, Holy Scripture was the fundamental rule of faith and conduct and, therefore, fundamental also for canon law. The very first Distinction in Part I of the *Concordia* deals with the natural law, *quod in lege et evangelio continetur.* In Distinction 20 there is a discussion of the relationship between the writings of the Fathers and papal decretals. Gratian maintained that papal decretals are to be taken *pari iure* with the conciliar canons. Concerning the writings of the Fathers he makes a distinction. It depends what is being discussed. The writings of the Fathers can be preferred to the writings of popes if it is a question of explaining Holy Scripture. But it is quite another matter if it is a dispute that has to be settled: 'ed aliud est causis terminum imponere, aliud scripturas sacras diligenter exponere. Negotiis diffiniendis non solum est necessaria scientia, sed etiam potestas' ('It is one thing to impose a settlement for cases; it is another to explain diligently the Scriptures. To settle business matters it is not enough to have the necessary knowledge, there must also be power').[146]

There are about 3,800 *auctoritates or* 'canons' quoted as canonical authorities in the *Decretum.*[147] About one third of these are taken from, or attributed to, the Fathers of the Church. If to these we add the patristic references that are

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[144] C. Munier, 'A propos des textes patristiques du Décret de Gratien', *Proceedings of the International Congress of Medieval Canon Law 1968* (Vatican 1971), 46.

[145] C. Munier, 'A propos des textes patristiques,' 46–48. See also Berman, *Law and Revolution,* 147, where the same example is given.

[146] Gratian, D.20, d.p.c.1.

[147] It is difficult to give an exact number of texts included by Gratian in his *Decretum.* In the Friedberg edition there are almost 4,000, but this does not mean that there are 4,000 different texts cited. One canon can contain several texts and a long decretal letter or passage from the writings of the Fathers can be divided up and distributed among a number of canons. Madame J. Rambaud counted 3823 'canons'. See Rambaud, *L'Age Classique,* 51. More than 300 texts are from the False Decretals.

included by Gratian in his commentary (the *dicta Gratiani*), then it is clear that the writings of the Fathers had a very important part in the formation and in the development of the *ius antiquum* of the Latin Church. The vast majority of these patristic canons are drawn from the great Latin Fathers: St Augustine, St Jerome, St Ambrose and St Gregory the Great, with relatively few 'canons' from the Greek Fathers.[148] The first twenty Distinctions of Part I of the *Decretum* are devoted to the discussion of authoritative statements concerning the nature of law and the various sources of law within the Church. Gratian discusses conciliar, patristic and papal authorities and arranges them in a hierarchical order of sources of canon law.[149] He includes a canon attributed to Pope Gelasius, in which are listed the writings of the Fathers that are to be honoured in the Church.[150] The list includes St Gregory Nazianzen, St Athanasius and St John Chrysostom. It is in this context that Gratian mentions the writings of the Greek Fathers and includes, with evident approval, the second canon of the Council *in Trullo,* which consecrated the juridical authority of the 'canons' of twelve Greek Fathers. This canon is summarized in Distinction 16, canon 7 where Gratian gives the list of the Greek Fathers listed in that canon.[151]

Gratian used the Greek patristic texts that he found in the canonical collections that he used, and he has included about 70 *auctoritates* taken from the writings of the Greek Fathers – canons attributed to St Basil, St John Chrysostom, St Gregory Nazianzen and others. While it is true that a number of these attributions are now known to be erroneous, nevertheless, their inclusion in the *Decretum* shows the respect in which Gratian held the Greek Fathers and their authority in the canonical tradition of the whole Church. That he relied mainly on the Latin Fathers is explained by the fact that the only canonical collections available to him in twelfth-century Bologna were in fact Latin collections. The *Nomokanon in XIV Titles* was apparently unknown at that time in the West. The twelfth century saw a revival of Greek studies in Italy where, it would appear, an attempt was being made to foster good relations between Rome and the emperors at Constantinople. Greek writings were arriving in Italy that had never previously been known in the West (for example, writings of St Basil, St John Chrysostom and St John Damascene's *de fide orthodoxa*).[152] But this does not seem to have had any noticeable impact on Gratian's *Decretum.* The period that

[148] Gratian included more patristic texts than any previous canonical collection. According to C. Munier, 582 canons were attributed to St Augustine (almost 50% of the patristic texts), 201 to St Jerome, 148 to St Ambrose, 89 to St Gregory the Great, 77 to St Isidore of Seville, 33 to St John Chrysostom, 2 to Origen, 2 to St Basil, and 32 other ascriptions. The total number of patristic ascriptions is therefore 1,200. See C. Munier, *Les sources patristiques du droit de l'Église,* 123–127.

[149] See Berman, *Law and Revolution,* 144–148.

[150] Gratian, D.15, cc.1,2,3.

[151] Gratian, D.16, c.7 which is a citation of canon 2 of the Trullan Council of 691.

[152] See C. Munier, *Les sources patristiques du droit de l'Église,* 126–127. J. De Ghellinck, *Le mouvement théologique au xii siècle* (Brussels – Paris 1948), 374–390.

followed the publication of the *Decretum* was a period prolific in commentaries on Gratian's collection – the *summae, quaestiones,* which led to the systematic commentaries of *glossae* which culminated in the definitive version of the *Glossa Ordinaria* by John Teutonicus in 1220. Gratian's inclusion of the substance of the *sacri canones* in the *Concordia Discordantium Canonum* ensured that these ancient canons of the East and Greek patristic *auctoritates* became an important influence on the development of canon law in the West right down to modern times.[153]

Finally, to turn to the other points about clerical celibacy and re-marriage. Concerning divorce and re-marriage, Gratian was uncompromising. Although, as we have seen, he proposed his own theory about what was required to constitute a complete marriage, a theory which affected his teaching on divorce, there is no evidence that he interpreted the exception clause in Matthew (5:31 and 19:9) to permit divorce and re-marriage. Concerning the celibacy of the clergy, we have seen how strongly Gratian defended this. He fully backed the Gregorian Reformers' policy of trying to eradicate married priests from the Latin Church. However, from his *Decretum* it is clear that he was aware that there was a different church order in the Eastern Church on this matter. Gratian mentions this without indicating any sort of disapproval of the custom.[154] In Distinction 56 he is discussing the condition of sons of priests: could they also become priests or bishops? He quotes Pope Urban II who says that such men should not be allowed to be ministers at the altar. However, Gratian interprets this to mean, only if these men are imitators of the incontinence of their father; if they are virtuous men they can be not only priests but also popes. He quotes a canon which he attributes to Pope Damasus:

> Pope Hosius was the son of the subdeacon Stephen. Pope Boniface was the son of the priest Iucundus. Pope Felix was the son of the priest, Felix, Pope Agapitus was the son of the priest Gordianus. Pope Theodore was the son of Theodore, bishop of the city of Jerusalem. Pope Silverius was the son of Silverius, bishop of Rome. Pope Deusdedit was the son of the subdeacon Stephen.[155]

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[153] See C. Gallagher, 'Sacri Canones nel Decretum di Graziano', *Ius in Vita et in Missione Ecclesiae* (Vatican 1994), 763–771.

[154] Gratian, D.56, d.p.c.13: 'Cum ergo ex sacerdotibus nati in summos Pontifices, supra leguntur esse promoti, non sunt intelligendi de fornicatione, sed de legitimis coniugiis nati, que sacerdotibus ante prohibitionem ubique licita erant, et in orientali ecclesia usque hodie eis licere probatur'.

[155] Gratian, D.56, c.2: 'Osius Papa fuit filius Stephani subdiaconi. Bonifatius Papa fuit filius Iucundi presbiteri. Felix Papa fuit filius Felicis presbiteri de titulo fasciolae. Agapitus Papa filius Gordiani presbiteri. Theodorus Papa filius Theodori episcopi de civitate Ierosolima. Silverius Papa filius Silveri episcopi Romae. Deusdedit Papa filius Stephani subdiaconi'.

Gratian adds a few more names to the list and goes on to say that many other names could be added to the list of sons of priests who had become pope. However, he adds, these men were born in lawful wedlock at a time when it was lawful for priests to be married, and he adds, as it still is lawful in the Eastern Church: 'et in orientali ecclesia usque hodie eis licere probatur'. He makes no criticism of the different discipline in the East. He seems to have accepted that different disciplines had legitimately grown up in different parts of the Church.

In this chapter I have indicated the importance of Gratian's *Concordia Discordantium Canonum* for the development of canon law in the Western Church. The *Decretum* became the first volume of the official collection of canon law, the *Corpus Iuris Canonici,* which contained the canon law of the Latin Church right up to the promulgation of the *Code of Canon Law* in 1917. As we have seen, Gratian provided an abundance of juridical authorities to support the supreme legislative authority of the bishop of Rome over the whole Church. He was also in wholehearted support of the Latin Church's legislation on clerical celibacy. He did not include any authorities that would have justified re-marriage after divorce in certain circumstances.

Sir Richard Southern has dedicated to Gratian the last part of his magisterial study of the twelfth century, *Scholastic Humanism and the Unification of Europe.* He describes the *Concordia Discordantium Canonum* as 'The First Masterpiece of Scholastic Humanism'.[156] He writes:

> Gratian's work has the singular eminence, at one and the same time, of outlining a new system of practical ecclesiastical law, and of creating a whole new scholastic discipline with a new set of technical terms grounded in the new processes of the ecclesiastical law-courts.[157]

Concerning legislative authority in the Church and Gratian, Professor Southern has this to say:

> It must finally be added that Gratian's great work is essentially a theological and political document, preparing the way – and intended to prepare the way – for the practical asserting of the supreme authority of the papacy as lawgiver of Christendom.[158]

I do not find myself in disagreement with this conclusion of Southern. Yet, at the same time, Gratian does seem to see some place in the Church's structure for the pentarchy. He even includes canon 36 of the Trullan Council, concerning the honour due to the five patriarchs. This kept the idea alive in the canon-

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[156] R. W. Southern, *Scholastic Humanism and the Unification of Europe,* 305.
[157] *Ibid,* 291.
[158] *Ibid,* 286.

istic memory in the West and had some influence later.[159] Hopes of reunion were raised by the negotiations of Pope Alexander III and Emperor Manuel Comnenus in the early sixties of the twelfth century, but these were short-lived.[160] Towards the end of the century, Theodore Balsamon, the most learned canon lawyer in late twelfth-century Constantinople, had quite a different view of things as we shall see in the next chapter.

[159] The pentarchy was mentioned by the decretist Magister Rufinus, in his *Summa Decretorum* (c. 1157–59) and in the opening address which he gave at the Third Lateran Council in 1179, as bishop of Assisi, he ascribes a special place in the hierarchy to the five patriarchal churches – Antioch, Alexandria, Byzantium, Jerusalem and Rome. See F. Dvornik, *The Idea of Apostolicity in Byzantium and the Legend of the Apostle Andrew* (Harvard 1958), 284.

[160] See Michael Angold, *Church and Society in Byzantium under the Comneni 1081–1261* (Cambridge 1995), 110–111.

CHAPTER FIVE

Theodore Balsamon: The Orthodox Church in Twelfth-Century Constantinople

Towards the end of the last chapter I quoted an observation by Sir Richard Southern on the *Concordia Discordantium Canonum*, describing it as

> essentially a theological and political document, preparing the way – and intended to prepare the way – for the practical asserting of the supreme authority of the papacy as lawgiver of Christendom.[1]

While this is true, it is also the case that Gratian does show great respect for the *sacri canones* and the canonical tradition of the East, and accepts a different regime with regard to a married clergy, for example.[2] I have not found any trace of hostility in the *Decretum* towards the Church of Constantinople.[3] However, the atmosphere in twelfth-century Constantinople was quite different. Having examined the most important twelfth-century canonical collection in Bologna, I turn now to the most important canonical collection in twelfth-century Constantinople and to the canonist who published the most famous commentary on this collection, Theodore Balsamon. I will first of all discuss why Theodore Balsamon merits the attention of canonists today. Secondly, I will outline the vision of the Church that we see reflected in his canonical commentaries. Lastly, I will consider how Balsamon commented on the laws regarding a married clergy and

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[1] R. W. Southern, *Scholastic Humanism and the Unification of Europe. Volume I. Foundations* (Oxford 1995), 286.

[2] In D.28, d.p.c.13 where Gratian notes, without any adverse comments, that there is a different discipline in the Eastern Church: 'et orientalis ecclesia non suscipit generale votum castitatis. Hoc tamen diligenti observatione custodit, ut post adeptum sacerdotium, defuncta priore uxore, cum qua sacerdos factus fuerat, si alteram duxerit, deponatur'. This is an accurate statement of what was, and still is, the law for the Eastern Churches. A married man may be ordained a priest and continue to live with his wife; but if his wife dies, the priest may not re-marry.

[3] Even towards the end of the eleventh century there was no general hostility towards Constantinople in Rome. This is shown clearly in Pope Gregory VII's attempts at reuniting the two Churches. See H. E. J. Cowdrey, *Pope Gregory VII* (Oxford 1998), 481–487: 'The events of Pope Leo IX's pontificate when, in 1054, Cardinal Humbert and Frederick of Lorraine made their journey to Constantinople as papal legates, which ended in the laying of mutual anathemas by the legates and the patriarch, Michael Keroularios, did little to dissipate this basic goodwill. The anathemas left no visible long-term scar upon memories at Rome, and least of all on the young Hildebrand's, although he must have learned at Rome of what had happened'. *Pope Gregory VII,* 482. The tragic events surrounding the sack of Constantinople by Latins still lay far in the future.

the Orthodox Church's legislation on divorce and re-marriage and on mixed marriages. Theodore Balsamon was born in Constantinople, probably in the thirties of the twelfth century. He was ordained a deacon in the church of *Hagia Sophia* and held important posts there. First of all, he was *nomophylax* – president of the law school, with senatorial rank.[4] He was later appointed to the even more prestigious post of *chartophylax*, and as such belonged to the highest rank of administrative officers in the patriarchal chancery. The *chartophylax* was one of the five senior officials, the chief judicial delegate of the patriarch. It was his right and duty to preside over the Permanent Synod – the '*synodos endemousa*'[5] – when the patriarch was absent.[6] Between 1185 and 1189, he was nominated patriarch of Antioch through the intervention of Emperor Isaac II Angelos, though he continued to reside in Constantinople. It should be recalled that Antioch had been captured in 1098 by the Norman Crusaders, under Bohemund I, who, instead of returning Antioch to the Greeks, as Pope Urban II had promised, made it into a Latin principality. In 1100 the Greek Orthodox patriarch, John V, withdrew to Constantinople. Latin patriarchates were set up in Antioch and Jerusalem. Some regard this taking possession of Antioch as the first open sign of the schism between Rome and Constantinople. The situation in Antioch was one among a number of reasons why Balsamon had little patience with the Latins from the West. It is not known with certainty when Balsamon, then Patriarch Theodore IV of Antioch, died, but it was later than 1195.

It is important to see Balsamon against the background of the city where he lived and worked all his life. There is no evidence of his having travelled outside Constantinople. He worked in the imperial court of twelfth-century Constantinople, the splendid court of Emperor Manuel I Komnenos. At that time Constantinople ranked amongst the grandest cities in the world, with a population of about 400,000, when Venice had about 80,000 inhabitants and Rome 50,000. The city had expanded during the eleventh and twelfth centuries. It was a city of magnificent palaces, churches and monasteries: Hagia Sophia, with its resplendent mosaics, the palace of Justinian, the church of St Saviour Pantokrator, the church of St Saviour in Chora, the Blachernai Palaces, Pammakaristos

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[4] The *Nomophylax* – guardian of the law – was a prestigious post in the twelfth-century imperial court. It was created by Constantine IX in 1043 and its holder, as president of the law-school, was given senatorial rank.

[5] The Permanent Synod was a patriarchal committee which met several times a week to deal with routine administration. It consisted of the major officials of the patriarchal chancery and any metropolitans who were in Constantinople at the time. It was this standing synod that presented the three names to the emperor when a new patriarch was to be appointed. It was also responsible for the nomination of metropolitans.

[6] See Ruth Macrides, 'Nomos and kanon on paper and in court'. R. Morris (editor) *Church and People in Byzantium* (Birmingham 1988), 68–69. For T. Balsamon on the rights and duties of the *Chartophylax* see RP, vol. IV, 530–541. Also Paul Magdalino, *The Empire of Manuel I Komnenos 1143–1180* (Cambridge 1993), 302–303.

and the great urban abbeys. The court of the urbane Emperor Manuel I Komnenos (1143–1180) 'was a dazzling display of power and wealth, where state occasions were celebrated with fairy-tale magnificence'.[7] The imperial courtiers formed a powerful group in the city. Theodore Balsamon was an influential member of this court. That he was regarded as an expert in both canon law and in civil law is shown by the commission that he was given around the year 1170 by Emperor Manuel I and Patriarch Michael, the commission that made his name famous. This was to clarify and bring up to date the *Nomokanon in XIV Titles,* the official law-book of the Church of Constantinople. It is this commentary on the canons and the current ecclesiastical legislation that made his name, and it is for this that Theodore Balsamon is remembered today as the most distinguished canonist of Byzantium surpassing all other Byzantine canonists 'by his mastery of the law, both civil and ecclesiastical, and by his juridical genius'.[8]

Balsamon's voluminous commentary is divided into two parts. He provides first of all a commentary on the *Nomokanon.* This, as we have seen in an earlier chapter, was the systematic canonical collection in fourteen titles, in which references to the church canons are combined with the relevant imperial legislation under the appropriate title.[9] In this first part of his commentary, Balsamon is concerned almost exclusively with ecclesiastical laws that had been promulgated by the emperor. In the second, and far longer, part he provides a commentary on the canons that were contained in the chronological collection of conciliar canons and patristic texts which had been listed in the second canon of the Council *in Trullo* and which, with the additional canons from councils after the Trullan council, constituted the official collection of canon law for the Byzantine Church.[10] In the introduction to his commentary Balsamon explained the

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[7] P. Magdalino, *The Empire of Manuel I Komnenos,* 1.

[8] 'Omnes reliquos canonistas byzantinos superat scientia iuris et civilis et ecclesiastici atque ingenio iuridico'. E. Herman, 'Introductio', in J. Croce, *Textus Selecti ex operibus commentatorum byzantinorum iuris ecclesiastici. Codificazione canonica orientale. Fonti,* Serie II, Fascicolo V (Vatican 1939), 25. On Balsamon's method, see the detailed study by G. P. Stevens, *De Theodoro Balsamone. Analysis Operum ac Mentis Iuridicae* (Rome 1969); also Ruth Macrides, 'Nomos and Kanon on paper and in court,' 73–85. For details of Balsamon's life and work, see E. Herman, DDC, vol. II, 76–78. For more recent assessments from the historian's point of view, see J. M. Hussey, *The Orthodox Church in the Byzantine Empire* (Oxford, 1986), 304–310; Paul Magdalino, *The Empire of Manuel I Komnenos 1143–1180, passim* but especially 293–297. M. Angold, *Church and Society in Byzantium under the Comneni 1081–1261* (Cambridge 1995), *passim,* especially 101–104; 148–156.

[9] See above in Chapter Two, 37–49.

[10] The most recent edition of the *Nomokanon* is J. B. Pitra, *Nomocanon XIV Titulorum* in *Iuris Ecclesiastici Graecorum Historia et Monumenta,* 1864–68, vol. II, 445–640. For the Greek text of the *Nomokanon,* as well as the chronological collection of conciliar canons, with the commentary by T. Balsamon, see RP, vols I to IV. In a less satisfactory edition, the Greek text, with a Latin translation, is to be found in PG, vol. 104, cols 975–1218, for the *Nomokanon* in the strict sense of the word, and in PG, vols 137 and 138, for the chronological collection of the canons. Balsamon

approach that he was adopting. He informs the reader that he had undertaken the work at the command of the Emperor Manuel I Komnenos and the patriarch of Constantinople, Michael III Anchialos. This means that he must have begun around the year 1170.[11] His aim in the first part, that is in the *Nomokanon,* in the strict sense, was to clarify the current state of the ecclesiastical legislation as it then was: what ecclesiastical laws (i.e. imperial constitutions on church affairs) were still in force and what had been altered or completely abrogated by later legislation. He did this by indicating which laws had been received into the *Basilika* and which had not. The *Basilika* (τὰ Βασιλικά, that is, laws made by the emperor) was the official collection of imperial legislation that had been promulgated in Constantinople towards the end of the ninth century or beginning of the tenth century by Emperor Leo VI with the aim of bringing up to date the entire civil legislation and eliminating all that was no longer in force.[12] Inclusion of a law, therefore, in the *Basilika* was taken to mean that it still formed part of the *ius vigens;* whereas if a law had not been included in the *Basilika,* it was to be considered abrogated. Balsamon then indicated where in the *Basilika* a particular law from the *Digest,* or the *Codex* or the *Novellae* was to be found. Apparent contradictions are resolved by referring to juridical science or tradional interpretations. Finally Balsamon brought his commentary on the *Nomokanon* up to date by providing information about other relevant decisions that had been made, either by the emperor or by the patriarch in synod, since the promulgation of the *Basilika.*[13]

There are 238 chapters in the *Nomokanon.* Of these chapters there are 150 which do not contain any imperial legislation; they consist entirely of church canons. In the first part of his commentary Balsamon provides no comment on

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was also responsible for a version of replies made by the permanent synod in Constantinople to questions that had been raised by Mark, patriarch of Alexandria, when he was visiting Constantinople (see RP, vol. IV, 471; PG, vol. 138, cols 951–1012.) See V. Grumel, 'Les Réponses canoniques à Marc d'Alexandre, leur caractère officiel, leur double rédaction,' *Échos d'Orient* 38 (1939), 321–333. 'Mark was worried by problems which were constantly arising in a minority patriarchate set amid non-Chalcedonians in a Muslim-governed land,' J. M. Hussey, *The Orthodox Church in the Byzantine Empire* (Oxford 1986), 307.

[11] Balsamon explains why the emperor asked him to provide a commentary in the introduction to the *Nomokanon.* (PG, vol. 104, cols 975–976). He provides further information in his scholion to *Nomokanon,* I, c. 9: 'The time within which bishops are to be ordained.' PG, vol. 104, cols 993–994.

[12] This was based on Justinian's *Corpus* and contained much ecclesiastical legislation. 'The most recent study of the problem confirms that there were versions of the *Basilika,* one promulgated under Leo VI in the tenth century, the other, a more abridged version, in the eleventh century under Constantine VIII (1025–1028). It is this later version to which Balsamon refers [in RP, vol. I, 32]'. Ruth Macrides in 'Nomos and Kanon on paper and in court', 74, note 64.

[13] See B. Stolte, 'The Past in Legal Argument in the Byzantine Canonists of the Twelfth Century', in N. Oikonomides (editor), *Byzantium in the Twelfth Century* (Athens 1991) 199–210. This is a well-documented paper on how Balsamon used historical precedents in his legal arguments.

these canons; he simply refers the reader to his commentary in Part II of his work, the commentary on the chronological collection of canons. On the remaining chapters he provides 159 *scholia.* Most of these are concerned with the clergy or with marriage problems. The second part of Balsamon's commentary is taken up with the conciliar canons and patristic texts that are contained in the chronological collection sanctioned by *Trullo* and later councils. On these he provides a lengthy commentary. At times he gives a paraphrase of the canon and explains expressions that might cause difficulty.[14] He will often give the historical context and the motivation that lay behind a particular canon.[15] He often compares canons and laws with each other, to confirm his interpretation or to indicate apparent contradictions. He will also note whether or not canons have been abrogated or fallen into desuetude. On occasion he formulates problem cases and then provides his solution. At times he confirms his interpretation of the canon by quoting an imperial constitution or a patriarchal decree. Sometimes he provides background information by recounting events that have happened in his own experience or draws attention to controversies that have arisen over the interpretation of certain canons.[16]

Paul Magdalino, in *The Empire of Manuel I Komnenos 1143–1180,* refers frequently to the work and influence of Theodore Balsamon in the imperial court of twelfth-century Constantinople. He expresses reservations about Balsamon's positive contribution to the progress and development of canon law because of his repeated assertion and justification of imperial prerogatives over the Church. As will be seen shortly, Balsamon was very much the emperor's man and did not share the desire for greater freedom for the Church that had been seen in Byzantine reformers of the eleventh century before the arrival of the Komnenoi emperors. However, Magdalino acknowledges his outstanding expertise as a canonist. He thinks that if later canonists had built on Balsamon's methods, Byzantine canon law could have become as specialised a discipline as it was becoming in the West.[17] Balsamon was intent on explaining the Church's law and in reconciling apparent contradictions within that legislation. He was an outstanding jurist, expertly able to explain the law. He had a great respect for the *sacri canones* and held that the Holy Spirit speaks to us through the canons. Yet he was not a rigorist and could show flexibility in his interpretation and application of the law. The bishop should be humane in applying the law. The aim of the canon law, Balsamon held, was the salvation of men:

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[14] See, for example, his commentary on canon 61 of the Trullan Council. Here Balsamon explains what is meant by the terminology used about those who pretend to be possessed by demons and how they should be punished if they do not repent.

[15] When he is explaining, for example, the background to canon 16 of the Council of Chalcedon, which concerns consecrated virgins who have attempted marriage. RP, vol. II, 257; PG, vol. 137, cols 443–446.

[16] See G. P. Stevens, *De Theodoro Balsamone,* 81–85.

[17] Magdalino, *The Empire of Manuel I Komnenos,* 293–294.

> Τοῖς γὰρ ἱεροῖς καὶ θείοις κανόσι μόνης τῆς ψυχικῆς τῶν ἀνθρώπων σωτηρίας ἐμέλησε, καὶ ἑτέρου παντελῶς οὐδένος.[18]

This glance at Balsamon's aims and method cannot but remind us of the work of his near contemporary in twelfth-century Bologna, Gratian, who, as we have seen, about thirty years earlier had tried to do something similar for the West in his *Concordia Discordantium Canonum.* There is no direct evidence that Balsamon knew about Gratian's *Decretum*, but we do know that Emperor Manuel I was in regular contact with the West and in particular with Italy, where he had friends in Venice, Ravenna, Pisa, Genoa and Milan and he supported the Lombard League against the Hohenstaufen emperor, Frederick Barbarossa I (1122–1190). He also had regular relations with the papal court of Alexander III, 'with whom he exchanged numerous legations between 1160 and 1180.'[19] In these circumstances of frequent and regular diplomatic contact between Rome and the imperial court, it is difficult to think that lawyers in twelfth-century Constantinople would have been unaware of Gratian's *Concordia Discordantium Canonum,* and not well-informed about the flourishing canonical and legal renaissance that was taking place in Northern Italy. Theodore Balsamon was Manuel I's leading legal adviser. There are, in fact, striking similarities in the work of Gratian and Balsamon. Both canonists were very methodical in their approach. They both set out to provide greater clarity and harmony in the law, by resolving apparent contradictions and indicating which laws had been abrogated or had fallen into desuetude. In doing so, both canonists produced definitive canonical collections of the canon law as this had developed in the first millennium of the Church. There are, however, important differences between these two great canonists, both in the work they set out to do and in the vision of the Church that lay behind the whole enterprise.[20]

In the first place, Balsamon had an official and authoritative collection of canonical and ecclesiastical legislation ready to hand in the *Nomokanon in Fourteen Titles*. This was the subject treated in Part I of Balsamon's commen-

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[18] 'The aim of the sacred and divine canons is to look after the salvation of men's souls; this and absolutely nothing else'. This is in his comments on canon 4 of what is known as the 'First-and-Second Council of Constantinople,' which, as Balsamon explains, was a council held in the time of Patriarch Photios and which had two sessions. RP, vol. II, 662 (PG, vol. 137, col. 1024). Balsamon's comment is reminiscent of the last canon in the 1983 Latin *Code of Canon Law* which ends with these words: 'servata aequitate canonica et prae oculis habita salute animarum, quae in Ecclesia suprema semper lex esse debet'. ('Observing canonical equity and keeping before one's eyes the salvation of souls, which ought always to be in the Church the supreme law'). The medieval sources for this canon are given as Ivo of Chartres, Raymond of Peñafort and Thomas Aquinas. See CIC, canon 1752.

[19] P. Magdalino, *The Empire of Manuel I Komnenos,* 84.

[20] For a more detailed study of the differences between Gratian and Balsamon, see C. Gallagher, 'Theodore Balsamon and Gratian: Two Twelfth-Century Canonistic Methodologies Compared.' in N. Oikonomides (editor), *Byzantium in the 12th Century* (Athens 1991), 61–89.

tary. Part II consisted of the official chronological collection of conciliar canons and patristic texts that had been sanctioned by the Council *in Trullo* (692) in its second canon and confirmed by the first canon of the Second Council of Nicaea in 787,[21] together with conciliar canons that had been promulgated after the Trullan Council. It has to be added, however, that, although he had an authoritative collection ready to hand, Balsamon did not take this over without making additions. One of the great merits of his work is that he included in his commentary *novellae* of Emperor Leo VI and of the Komnenoi emperors, as well as synodal and patriarchal decrees which are known to us now only because they were included by Balsamon. Otherwise they would have been forgotten.

In the West, on the other hand, Gratian, earlier in the twelfth century, had been faced with quite a different task. He had no official canonical collection to start from. So he was free to make his own collection and did not set out to produce a commentary on an already accepted collection of canon law. As we have seen in the last chapter, his aim was at once more modest and more ambitious. He set out to produce a complete and comprehensive collection of the canon law that was in force in his time in such a way as to be of practical use both to students of canon law and to church administrators. This explains the structure that he adopted for the *Decretum.* But he also wanted to provide a harmonious *corpus* of canon law and remove apparent contradictions between the canons: *Concordia Discordantium Canonum.* This is the point of his commentary. Gratian's *Decretum* was seen at once to be an achievement of genius and it very quickly became the semi-official collection of the *ius antiquum* for the Latin Church. So the guiding ideas behind the structure and composition of the two collections were very different from each other. There was another important difference: the vision of the Church that lies behind the commentaries is very different in Balsamon from that which we have seen guiding Gratian's thinking, as we shall now see.

The Vision of the Church reflected in Balsamon's Commentaries

The vision of the Church that we find in Balsamon's commentary reflects the nature and structure of the canonical collection that he is commenting on. His commentary on the systematic *Nomokanon* deals entirely with imperial legislation on ecclesiastical affairs. Indeed Balsamon had been invited by the emperor himself to revise the *Nomokanon* and bring harmony into the law. His commen-

[21] It is significant that Pope John Paul II makes a direct and specific reference to these *sacri canones* in the apostolic constitution with which he promulgated the *Codex Canonum Ecclesiarum Orientalium* in October 1990. The reference to canon 1 of the Second Council of Nicaea (which refers to the canons sanctioned by *Trullo*) is a clear indication of how the attitude of the Church of Rome to the Trullan Council has changed. AAS, vol. 82 (1990), 1033–1034.

tary on the chronological collection of conciliar canons and patristic texts displays another important difference between the *Concordia Discordantium Canonum* of Gratian and the collection commented on by Balsamon. They have in common the canons of the first seven ecumenical councils up to Nicaea II, along with the canons from the eastern regional synods that John Scholastikos had included in his *Synagoge* and Dionysius had translated in Rome in the sixth century. For the rest, where Gratian has an abundance of papal decretal letters and a very large number of 'canons' from the Latin Fathers, particularly from St Augustine, Balsamon has not a single decretal from the patriarch of the West. Instead he has a large number of 'canons' from the patriarch of Constantinople, the patriarch of Alexandria and other Eastern bishops.

So it is clear from the structure of the collections and from the authorities that were used in each that Gratian's *Decretum* and Balsamon's Commentaries embody two different ideas about the nature of ecclesiastical legislation and the sources of legislative authority in the church. The role of the emperor is of crucial importance. We can get a clearer idea of the vision of the Church that lies behind Balsamon's commentaries if we consider two key concepts in his thinking: the role of the emperor within the Church and the role of the pentarchy in ecclesiastical government, as well as the place he assigns to the bishop of Rome.

The Role of the Emperor in the Church

It would be anachronistic to talk strictly about 'Church-State' relations in twelfth-century Constantinople. There was no clearly defined concept of the state as an autonomous entity wholly independent from the Church. In the empire there was one body, the Church, that included everyone who was baptized and in twelfth-century Constantinople this meant virtually every citizen. The position of the emperor in the Church and the central and very active role that he was expected to play in church administration has already been discussed in some detail in Chapter Two. This was the tradition concerning the role of the emperor in Constantinople that Balsamon inherited. He accepted it and he developed it to the full. As Magdalino observes, 'A palace official, he could hardly have done more to assert and justify imperial prerogatives over the Church. Balsamon notoriously quotes more imperial laws than synodal decisions. Justinian, Leo VI and Alexios I are invoked with the fathers of the seven holy and ecumenical councils on an equal or even superior footing'.[22] This may be the case in practice, but Magdalino is inaccurate when he goes on to state that 'where *nomos* and *kanon* conflict, it is *nomos* that wins'. In his commentary on Justinian's constitution which decreed that 'the holy ecclesiastical canons,

[22] P. Magdalino, *The Empire of Manuel I Komnenos*, 294.

which were promulgated or confirmed by the seven holy councils, should have the force of law',[23] Balsamon does maintain that, in theory at least, the canons must prevail where there is a conflict between a canon and a law. When he discusses expressly the question about which should prevail when there is a conflict, he states: 'Observe this present interpretation and always be mindful of it: the canons have greater authority than the laws'.[24] The emperor, however, has the power to over-rule laws and canons in particular situations. He was indeed *solutus legibus.*[25] Balsamon states explicitly at one point in his commentary that the emperor was bound neither by imperial legislation nor by ecclesiastical canons. He makes this statement while commenting on the sixteenth canon of the Council of Carthage which forbade clerics to become involved in secular affairs.[26] In a long commentary on this canon, which he fully commends, he points out that similar legislation is to be found in the *Apostolic Canons* and in canon 3 of Chalcedon. However, he is in agreement with those who hold that the emperor can, *on occasion*, command a cleric to take up some secular work to meet a particular need. The emperor has the power to do this precisely because he is not in every instance bound by the canons. Balsamon insists, however, that the emperor should only use this power in exceptional cases, by way of dispensation and for a good reason. Even so, the statement does in fact, attribute very extensive powers to the emperor, although it does not imply *unlimited* power over all aspects of the Church's life. The emperor could *not* intervene in dogmatic matters.[27]

The emperor also possessed certain liturgical privileges. By his anointing he becomes the *christos* of the Lord, can enter freely into the inner sanctuary and incense and bless the people, just like a bishop. Balsamon held that the emperor possessed a quasi-priestly character that was conferred by his anointing.[28] 'For emperors who appoint patriarchs by invocation of the Holy Spirit, and are anointed [*christoi*] of the Lord, enter the holy sanctuary without hindrance

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[23] *Novella* 131.

[24] Balsamon is here commenting on the second chapter of Title I of the *Nomokanon in XIV Titles.* RP, vol. I, 38.

[25] See Dieter Simon, '*Princeps legibus solutus*: die Stellung des byzantinischen Kaisers zum Gesetz,' D. Nörr and D. Simon (editors), *Gedächtnisschrift für Wolfgang Kunkel* (Frankfurt 1984), 449–492. P. Magdalino, *The Empire of Manuel I Komnenos,* 263.

[26] Council of Carthage, can. 16. RP, vol. III, 350 (PG, vol. 138, col. 93).

[27] The term 'ecclesiastical canons' that is used above does not, according to modern Greek theologians, apply to matters of faith, but only to church discipline and administrative matters. See C. H. Alivizatos, *The Holy Canons* (Athens 1949), 21.

[28] See G. Dagron, 'Le caractère sacerdotal de la royauté d'après les commentaires canoniques du XIIe siècle', N. Oikonomides (editor), *Byzantium in the 12th Century,* 165–178. Dagron notes that Balsamon's views on the priestly character of the imperial power was shared by another prominent twelfth-century ecclesiastical figure, Demetrios Chomatianos (1150–1236), Archbishop of Ochrid from 1216 to 1236.

whenever they wish, and they come and bless the people with the candles,[29] just like bishops... Since the emperor of the day is the Lord's anointed through the unction of kingship, and Christ our God is proclaimed, among other things, high priest, the emperor is rightly adorned with high priestly graces'.[30] In another passage Balsamon is more explicit about this right of the emperor: the anointing, through the power of the Holy Spirit that it confers, permits the emperor to give homilies to the people, to incense in the same way as priests do and to bless with the double candle, which is the symbol of the διδασκαλικὸν ἀξίωμα, for him as for the patriarchs and the bishops.[31] The emperor can also use his authority to re-organize dioceses and to remove bishops and so on.

Balsamon also argued that in a certain sense the emperor must be considered superior to the patriarch even in church affairs. His argument for this followed from the fact that 'the power and activity of the emperor concerns both body and soul, while the power and activity of the patriarch is concerned only with the soul.'[32] Balsamon also maintained that even the patriarch of Constantinople was, in the last resort, responsible for his actions to the emperor. After all, the emperor, as the 'anointed of the Lord', was the divinely appointed guardian of the faith within the Church, the *epistemonarches* (ἐπιστημονάρχης), a title which up to the twelfth century had been given to those who look after order and discipline in schools and monasteries,[33] but which was now given to the emperor with reference to his activity within the church.[34]

The doctrine of the emperor's divine right found symbolic expression in the rite of anointing the emperor. It cannot be shown from Balsamon's text that he

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[29] The liturgical candles used by an Eastern bishop in bestowing solemn blessings were the triple-branched *trikerion,* in honour of the Blessed Trinity, and the double-branched *dikerion,* which symbolizes the two natures in Christ.

[30] See P. Magdalino, *The Empire of Manuel I Komnenos,* 294–295. This is Balsamon's comment on canon 69 of the Council *in Trullo.* RP, vol. II, 466–467; PG, vol. 137, cols 751–754: 'Absolutely no one from amongst the laity shall be allowed to enter within the holy sanctuary; though the emperor's majesty and authority shall in no wise be hindered from doing so, whenever he desires to offer gifts to the Creator, in accordance with a most ancient tradition – κατά τινα ἀρχαιοτάτην παράδοσιν'. M. Featherstone and G. Nedungatt (editors), *The Council in Trullo Revisited* (Rome 1995), 151.

[31] *Response on the Rights of the Patriarchs* in RP, vol. IV, 544. This is quoted by Gilbert Dagron, 'Le caractère sacerdotal de la royauté d'après les commentaires canoniques du XIIe siècle,' N. Oikonomides (editor), *Byzantium in the 12th Century,* 170.

[32] *Meditata de Privilegiis Patriarcharum.* RP, vol. IV, 542; PG, vol. 138, col. 1013.

[33] G. W. H. Lampe, says the term means 'a disciplinary officer in a monastery'. *A Patristic Greek Lexicon* (Oxford 1961), 535.

[34] See RP, vol. III, 149; PG, vol. 137, col. 1312. The Greek *Thesaurus* has an interesting comment on the term ἐπιστημονάρχης which it translates as *peritus*: 'titulus quem sibi adscribebant Imperatores Constantinopolitani, tamquam essent doctrinae ac disciplinae ecclesiasticae praesides, quemadmodum hodie Angliae rex Caput Ecclesiae sese indigitat'. *Thesaurus Linguae Graecae,* H. Stephanus (Paris 1853), vol. III, col. 1802. See E. Herman, 'The Byzantine Empire,' *The Cambridge Medieval History,* vol. IV/2 (Cambridge 1967), 105.

has in mind a physical anointing with oil in the coronation ceremony. What Balsamon seems to have in mind is 'the anointing with the Holy Spirit' that comes with the title of emperor.[35] In our own day this doctrine has been severely criticised. The theory that the emperor was given his supreme authority in the Church through his sacred anointing, it has been argued, has no support in the whole period of the ecumenical councils. The custom of anointing the emperor came in very late and Professor Troickij has argued that it was a pure invention of Balsamon to justify the widespread interference by the Komnenoi emperors in church affairs.[36] However, because Balsamon was held in such high esteem as a canonical commentator this teaching was taken over by later canonists like Demetrios Chomatianos and Matthew Blastares and became the generally accepted teaching. It was Professor Troickij's opinion that this theory of what he termed 'pure caesaropapism' has done great harm to the Byzantine Church in Constantinople and later to the Church in Russia.[37]

It is also fair to add that, even in his own time, Balsamon's views on the supreme imperial authority were not shared by all his fellow churchmen in Constantinople. His views in fact went against a strong tradition in Orthodoxy which insisted on the complete independence of the Church from the State. This view was very strong in eleventh-century Constantinople but it was eclipsed under the Komneni emperors in the late eleventh and twelfth centuries. The Komnenoi emperors claimed supreme authority and in this Balsamon supported them. In this his vision of the Church was not shared by all in Constantinople. It is important to bear in mind that, even according to Balsamon's ecclesiology, the emperor was not thought of as being *above* the Church. He was not seen simply as a *secular prince.* He was a member of the Church and had a recognised role to play *within* the Church. Balsamon argued for the clear superiority of the imperial authority but always *within* the Church, not *above* or *apart from* the Church. He also maintained that the emperor and the patriarch should always work together in harmony. The Church has to be seen as one single society and the emperor and the patriarch have different *charismata* within this established Christian order.[38]

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[35] See G. Dagron, 'Le caractère sacerdotal de la royauté d'après les commentaires canoniques du XIIe siècle,' 174–175.

[36] See S. Troickij, 'Théocratie ou césaropapisme', *Messager de l'Exarchat du Patriarch Russe en Europe Occidentale,* 19 (1954), 165–177.

[37] S. Troickij, 'Théocratie ou césaropapisme', 174–177.

[38] See J. Řezáč, 'Chiesa e Stato in Oriente', in *Ius Populi Dei. Miscellanea in Honorem R. Bidagor* (Rome 1972), 255–279, especially 264–266. See also Gilbert Dagron, *Empereur et prêtre. Étude sur le 'césaropapisme' byzantin* (Paris 1996). 'To talk in terms of a dichotomy of "Church" and "State" is anachronistic for any part of medieval Christendom – all power needs to be sacralised, above all, royal power – but such a model of dichotomy means least in Byzantium, where through to the beginning of the thirteenth century the concept of the priest-emperor was fundamental. The book's main point is that the Byzantine concept was in no way an oriental aberration, as a line of thought with its roots in nineteenth-century polemics still likes to believe, but should count

It is easy to see how this vision of the 'Imperial Church' in Balsamon differs greatly from that which comes out of Gratian's *Decretum,* composed in Bologna shortly after the Concordat of Worms in 1122, which had finally settled the long controversy between pope and emperor over lay investiture. As we have seen, Gratian had laid firm foundations for the development of papal law – *ius pontificium* – which effectively excluded the emperor from any interference in the government of the Church of Rome, and argued forcefully for papal supremacy.

The Pentarchy

It is certainly the case that the authority of the emperor within the Greek Church constituted an important difference between East and West. Another factor which had an important part in the failure of union between the Eastern Church and the Latin Church in the West was the conflict between two basic conceptions of the nature of church government. Eastern churchmen in general stood for what they maintained was the traditional form of government in the Church, namely through the cooperation of the five patriarchs and general councils, whereas in the West the papacy was developing the position of the see of Peter as the monarchical head of all the Churches. This fundamental conflict between the Western view held by the papacy in Rome and the Byzantine tradition had already contributed to the failure of the papal mission to Constantinople in 1054.[39] The Byzantine concept of collegial authority, through the cooperation of the five patriarchal sees of Rome, Constantinople, Antioch, Alexandria and Jerusalem, was directly opposed to the monarchical claims of the papacy in Rome as *omnium ecclesiarum urbis et orbis Mater et Caput*, which, as we have seen, had greatly developed during the Gregorian Reform. The Eastern patriarchs were willing to acknowledge as traditional a certain primacy to the see of Peter but they were unwilling to accept papal assertions of universal disciplinary *jurisdiction.*[40]

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as an entirely normal and orthodox aspect of post-Constantinian Christianity'. (Mark Whittow in a review of Dagron's book in the *Journal of Ecclesiastical History* 49 (1998), 510). All this was poles apart from the Western concept of the 'two powers' as formulated by twelfth-century canon lawyers. Byzantium did not have the precision of Western lawyers. 'The emperor was in some sense a priest, but also a layman. The ambivalence of the emperor's status was acted out when he took up his position alongside the patriarch inside the sanctuary. What one made of the symbolism depended upon what story one wished to tell. Thus the emperor could be a priest, but at the same time not a priest; a "new David" mediating with God for his people, as well as a sinner like any other requiring the mediation of the Church to achieve salvation'. (M. Whittow, ibid.).

[39] See J. M. Hussey, *The Orthodox Church in the Byzantine Empire* (Oxford 1986), 135–136.

[40] There are innumerable books about the Roman Primacy. For some recent discussions see Olivier Clément, *Rome Autrement. Une réflexion orthodoxe sur la papauté* (Paris 1997); from the

In this one has, of course, to make a distinction between the pentarchy as the *historical* institution that existed and functioned, to a certain extent, within the political framework of the earlier centuries, the period between the fourth and the seventh centuries, and the pentarchy as a *practical and canonical* institution which could be an effective expression of the collegial nature of the government of the universal Church in the Middle Ages. In the earlier period, when there was still free communication between all the five patriarchs of Antioch, Alexandria, Jerusalem, Constantinople and Rome, the pentarchy could be taken seriously as an important element in the constitutional structure of the Church, a really collegial approach to ecclesiastical government. However, the rise of Islam in the Middle East, with its control of the Mediterranean, and the increasingly wide division between Rome and the Byzantine Empire made it more and more difficult to see the pentarchy as a practical reality. The *political* structures that were in place both in the Middle East and in the West no longer supported it. In spite of this, the dream persisted and the constitutional idea of the pentarchy as the expression of the government of the universal Church lingered on as an ideal both in the East and in the West.[41]

The *idea* of the pentarchy was still a living concept in Constantinople in the twelfth century and Balsamon defended the theory of the complete equality of the five patriarchal sees and maintained that this was of divine origin.[42] The five ancient patriarchs together constitute the head of the Church, and, as such, have a directive function within the whole Church, but no single patriarch can intervene in the affairs of another patriarchate.[43] When asked to explain the origin and nature of the pentarchy, Balsamon gave a reply that can be taken as one that would have been generally accepted in twelfth-century Constantinople. Canon 36 of the Council *in Trullo*, he argued, had decreed, as had the earlier councils of Constantinople I (381) and Chalcedon (451), that the see of Constantinople should enjoy the same privileges as the see of Ancient Rome and the same honour as that see, since it comes second after Rome, and is followed by Alexandria, Antioch and Jerusalem. From this Balsamon goes on to argue that the

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Roman Catholic point of view: M. J. Buckley, *Papal Primacy and the Episcopate. Towards a Relational Understanding* (New York 1998); P. Zagano and T. W. Tilley (editors), *The Exercise of Primacy. Continuing the Dialogue* (New York 1998).

[41] See V. Peri, 'La Pentarchia: Istituzione Ecclesiale (IV–VII sec) e Teoria Canonico-Teologica'. *Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo.* 34/1 (Spoleto 1988) 207–318. Gratian also makes mention of the pentarchy in *Concordia Discordantium Canonum,* D.22, cc.6–7.

[42] The idea of *complete equality* among the five patriarchs was not shared by Zonaras, as Professor Pheidas has shown in a recent study. See V. Pheidas, *'Primus inter pares', Kanon* 9 (1989), 181–188. See the commentary by Zonaras on canon 3 of the Council of Constantinople I: RP, vol. II, 174 (PG, vol. 137, cols 323–326); also on *Apostolic Canons,* canon 34: RP, vol. II, 45; PG, vol. 137, cols 107–108.

[43] See RP, vol. IV, 542ff.; PG, vol. 138, cols 1016ff.

bishops of these five most venerable sees are respected in this way throughout the whole civilized world. While maintaining that the bishop of Rome has been, with justification, cut off from communion with the other four churches, Balsamon thinks this does not destroy the established canonical order, though, of course, the bishop of Rome, while not in full communion with the others, could not exercise his patriarchal privileges. The five patriarchal sees are like the five senses which are equal in every respect. They are rightly called the heads of the churches that are spread throughout the civilized world and there can be no man-made difference between them. Balsamon returns repeatedly to his point that the see of Constantinople enjoys the same rights as the see of Rome because Constantinople is in fact the New Rome.[44]

Balsamon's views on Papal Primacy

As has been noted earlier, there is no direct evidence to show that the *Concordia Discordantium Canonum* was known in twelfth-century Constantinople, although given the regular contact between the court of Manuel I Komnenos and the West, Balsamon must have been well-informed about the legal renaissance that was taking place in twelfth-century Bologna. Be that as it may, there can be no doubt about how Balsamon would have reacted to the theory of Roman primacy defended in Gratian's *Decretum*. He would have rejected it totally. He argued, in fact, that the Roman primacy had passed from Rome to Constantinople, and it is in this sense that he interpreted a number of crucial canons from the early councils, and in particular, canon 3 of the First Council of Constantinople (381) and canon 28 of the Council of Chalcedon (451). It is, therefore, necessary at this point to examine these canons in some detail.

Canon 3 of the First Council of Constantinople (381):

> Because it is new Rome, the bishop of Constantinople is to enjoy the privileges of honour after the bishop of Rome.[45]

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[44] On the idea of the five patriarchates compared to the five bodily senses, see Athanasius the Librarian's opening discourse at the Council of Constantinople in 869 (Mansi vol. XVI, 7). Concerning the so-called Donation of Constantine, see Balsamon's commentary on the *Nomokanon* (PG, vol. 104, cols 1077–1084); on Chalcedon, canon 28 (PG, vol. 137, cols 485–489); on I Constantinople, canon 3 (PG, vol. 137, cols 321–326); on *Trullo*, canon 36 (PG, vol. 137, cols 637–638).

[45] DEC, vol. I, 32. The Latin text is: 'Verumtamen Constantinopolitanus episcopus habeat honoris primatum praeter Romanum episcopum, [τὰ πρεσβεῖα τῆς τιμῆς μετὰ τὸν Ῥώμης ἐπίσκοπον] propterea quod urbs ipsa sit junior Roma'. Brian Daley has made out a strong case for revising the common view of the phrase 'primacy of honour'. He argues that in the Roman world of those early centuries the word *honor* was frequently linked with a position of influence in

Canon 28 of the Council of Chalcedon (451):

> Following in every way the decrees of the holy fathers and recognising the canon which has just been read out – the canon of the 150 most devout bishops who assembled in the time of the great Theodosius of pious memory, then emperor, in imperial Constantinople, new Rome[46] – we issue the same decree and resolution concerning the prerogatives of the most holy church of Constantinople, new Rome. The fathers rightly accorded prerogatives to the see of older Rome, since that is an imperial city; and moved by the same purpose the 150 most devout bishops apportioned equal prerogatives[47] to the most holy see of new Rome, reasonably judging that the city which is honoured by the imperial power and senate and enjoying privileges equalling older imperial Rome, should also be elevated to her level in ecclesiastical affairs and take second place after her[48]. [so that][49] The metropolitans of the dioceses of Pontus, Asia and Thrace, but

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society. That the phrase *cursus honorum* was used to designate the sequence of high office in the state – *quaestor, praetor, consul* – supports this view. Daley argues that the 'primacy of honour' ascribed to the bishops both of Rome and Constantinople must be understood, in its original context, as having clearly practical and juridical implications. Having examined, not just the words used, but the context of classical usage and the actual prerogatives attributed to 'Old Rome' and to 'New Rome', he suggests the following translation of canon 3 of Constantinople I: 'The bishop of Constantinople shall have the prerogatives of office after the bishop of Rome, because it [Constantinople] is a new Rome'. Daley believes that this translation is confirmed by a careful reading of the documents that form the broader context of the legislation. At the council the meaning and implications of the bishop of Constantinople's privileges were discussed and specified in clear, practical terms. See Brian Daley, 'Position and Patronage in the Early Church: the Original Meaning of the *Primacy of Honour*'. JTS, 44 (1993), 529–553. In fact the word τιμή has a wide range of meaning in classical Greek and has much to do with rank and status. For example, to become ἄτιμος is to lose your status as a citizen, not just to be dishonoured. So the whole phrase, τὰ πρεσβεῖα τῆς τιμῆς, could be translated as 'privileged status'.

[46] A clear reference to canon 3 of the First Council of Constantinople which has just been quoted.

[47] 'τὰ ἴσα πρεσβεῖα'.

[48] 'δευτέραν μετ' ἐκείνην ὑπάρχουσαν'. – '*secundam post eam esse censemus*'.

[49] The Greek text here has 'καὶ ὥστε', meaning 'with the practical effect that' (the Latin text has *et ut* ...). This 'καὶ ὥστε' is important because it means that the council in this canon means to grant a vast jurisdiction to the bishop of Constantinople. It is not a merely honorary pre-eminence. Three large exarchies are in this way brought under the patriarch of Constantinople. These two canons were renewed in canon 36 of the Council *in Trullo* in 692, a version of which was included by Gratian in his *Decretum.* (D.22, c.6). 'Renovantes sancti Constantinopolitani concilii decreta, petimus [the original is decernimus, ὁρίζομεν, ὥστε] Constantinopolitana sedes similia privilegia [original is τῶν ἴσων ... πρεσβείων] quae superior Roma habet, accipiat, non tamen ecclesiasticis rebus magnificetur, ut illa; ut haec secunda post illam existens, prius quam Alexandrina sese numeretur; deinde Antiochena, et post eam Ierosolimitana.' Gratian adds a comment of his own here. This is to be understood, he writes, in the sense that Alexandria from being second becomes third, and Antioch from third becomes fourth; unless perhaps someone might wish to argue, Gratian adds, that there are two holding second place, Alexandria having equal dignity with Constantinople. (D.22, d.p.c.6). See J. Spiteris, *La Critica Bizantina del Primato Romano,* 230, note 57, where he notes how Greek authors show a tendency to give *ta presbeia,* when applied to

> only these, as well as the bishops of these dioceses who work among non-Greeks, are to be ordained by the aforesaid most holy see of the most holy church in Constantinople. That is, each metropolitan of the aforesaid dioceses along with the bishops of the province ordain the bishops of the province, as has been declared in the divine canons; but the metropolitans of the aforesaid dioceses, as has been said, are to be ordained by the archbishop of Constantinople, once agreement has been reached by vote in the usual way and has been reported to him.[50]

These two canons from two of the first four ecumenical councils, along with canons 3, 4, and 5 of the Council of Sardica, which deal with the right of appeal to the bishop of Rome,[51] are central to Balsamon's discussion of the Roman primacy. How the canons should be interpreted will depend, of course, on certain presuppositions. What is the foundation or basis for the pre-eminence of an episcopal see? Is it the political status of the city where the see happens to be? Or is it the Petrine foundation of the see? Balsamon makes 'τὰ ἴσα πρεσβεῖα' of the Bishop of Constantinople depend on the *imperial* dignity of the city and the presence of the emperor. In this he was probably voicing what was thought by most of his contemporaries in twelfth-century Constantinople.

The first thing to be determined is the meaning that should be given to the preposition μετὰ in the phrases μετὰ τὸν 'Ρώμης ἐπίσκοπον (canon 3) and 'δευτέραν μετ' ἐκείνην ὑπάρχουσαν' What is the meaning of this 'after' or *praeter* or *post*? The Greek word can have a variety of meanings, as can the English 'after' and the Latin *post* and *praeter*. Does the preposition simply have a *chronological* meaning? That is to say,'after Old Rome' in order of time, which of course the Greek expression *could* mean? Old Rome had these prerogatives first, but then some time later – subsequently, successively – New Rome received these same prerogatives? If this were the meaning to be given to the canon then Old Rome could not lay claim to any higher prerogatives than New Rome: what Old Rome had *first* New Rome has *now* – τὰ πρεσβεῖα τῆς τιμῆς. Or is the preposition μετὰ being used here to indicate 'yielding prece-

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Constantinople, a juridical meaning. Concerning the honour due to the five patriarchates, Gratian's *Decretum*, D.22, can. 7, is relevant. This is canon 21 of the Fourth Council of Constantinople of 869 (to condemn Photios): 'We define that no secular power should treat with disrespect any of those who hold the office of patriarch or seek to move them from their high positions, but rather they should esteem them as worthy of all honour and reverence. This applies in the first place to the most holy pope of Old Rome, secondly to the patriarch of Constantinople and then to the patriarchs of Alexandria, Antioch and Jerusalem'. DEC, vol. I,182). As has already been noted in Chapter Two, this council is not recognized by the Orthodox, who maintain, with good reasons, that it was abrogated by Pope John VIII in 879.

[50] DEC, vol. I, 99–100.

[51] Canons 3, 4, and 5 of the Council of Sardica deal with the possibility of a bishop appealing to the bishop of Rome in certain circumstances. The canons of Sardica are listed in canon 2 of the Council in Trullo (692), as having ecumenical authority, but, as has already been noted, these canons were controversial and not received by all in the East.

dence to', 'inferior to'? This is how the twelfth-century canonist of Constantinople, John Zonaras, interpreted the phrase. In his commentary on canon 3 of the First Council of Constantinople he argues that μετά means 'coming after in order of honour and seniority' with reference to Old Rome. He writes:

> In this place the Council takes action concerning Constantinople, to which it decrees the prerogative of honour, the priority and the glory after the bishop of Rome as being New Rome and the Queen of cities. Some indeed wish to understand the preposition μετά here of time and not of inferiority of grade. And they strive to confirm this interpretation by a consideration of the XXVIII canon of Chalcedon, urging that if Constantinople is to enjoy equal honours, the preposition 'after' cannot signify subjection. But on the other hand, the hundred and thirtieth *novella* of Justinian, Book V of the Imperial Constitutions, title three, understands the canon otherwise.[52] For it says, 'We decree that the most holy Pope of Old Rome, according to the decrees of the holy synods is the first of all priests, and that the most blessed bishop of Constantinople and of New Rome, should have the second place after the Apostolic Throne of the Elder Rome, and should be superior in honour to all others.' From this therefore it is abundantly evident that 'after' denotes subjection and diminution (ὑποβιβασμὸν καὶ ἐλάττωσιν). And otherwise it would be impossible to guard this equality of honour in each see. For in reciting their names, or assigning them seats when they sit together, or arranging the order of their signatures to documents, one must come before the other. Whoever therefore shall explain this preposition μετά as only referring to time, and does not admit that it signifies an inferior grade of dignity, does violence to the passage and draws from it a meaning neither true nor good. Moreover in canon 36 of the Council *in Trullo*, μετά manifestly denotes subjection, assigning to Constantinople the second place after the throne of Old Rome; and then adds: after this, Alexandria, then Antioch; and last of all shall be placed Jerusalem .[53]

This interpretation by Zonaras, which seems to put Constantinople in a position hierarchically inferior to Rome, has caused difficulties for Greek scholars, ancient and modern. Some argue that what Zonaras is saying applies not to the honour itself, but to the order in which the honour should be given. In this way, all are really equal in honour and Constantinople is to be 'second' to Rome, not in the honour, but in the order in which the honour is to be given. According to

[52] In fact, he is referring to *Novella* 131 (545 AD): chapter II: ' Καὶ διὰ τοῦτο Θεσπίζομεν, κατὰ τοὺς αὐτῶν ὅρους τὸν ἁγιώτατον τῆς πρεσβυτέρας 'Ρώμης πάπαν πρῶτον εἶναι πάντων τῶν ἱερέων, τὸν δὲ μακαριώτατον ἀρχιεπίσκοπον Κωνσταντινουπόλεως τῆς νέας 'Ρώμης δευτέραν τάξιν ἐπέχειν μετὰ τόν ἁγιώτατον ἀποστολικὸν θρόνον τῆς πρεσβυτέρας 'Ρώμης, τῶν δὲ ἄλλων πάντων προτιμᾶσθαι.' (Ideoque sancimus secundum earum definitiones sanctissimum senioris Romae papam primum esse omnium sacerdotum, beatissimum autem archiepiscopum Constantinopoleos Novae Romae secundum habere locum post sanctam apostolicam sedem senioris Romae, aliis autem omnibus sedibus praeponatur. *Novellae*, 654–655.

[53] RP, vol. II, 173–174. English translation in Percival, 178.

this interpretation, all the five patriarchs are equal and the bishop of Rome has a primacy of rank; he is *primus inter pares.*[54]

Balsamon, while citing the passage we have just read from Zonaras, and seeming to accept it, goes on to argue that Constantinople now has exactly the same prerogatives that Old Rome had. His argument is primarily political. At first, Byzantium did not even have an archbishop but, from the moment that 'the great Constantine transferred to Constantinople the sovereignty of the empire of the Romans and its name was changed to Constantinople, New Rome and queen of all cities, it was right that the fathers of the Second Ecumenical Council in 381 should decree, in canon 3, that Constantinople should have the prerogatives of honour after the bishop of Old Rome – τὰ πρεσβεῖα τῆς τιμῆς μετὰ τὸν ἐπίσκοπον τῆς πρεσβυτέρας Ῥώμης.[55] Balsamon interprets this in the sense that Constantinople was granted all the prerogatives of Old Rome later in time. Therefore, 'after' is to be taken in a purely temporal sense. Spiteris notes how Balsamon passes from the view of Zonaras, who, as we have just seen, speaks of Constantinople being in a state of ὑποβιβασμὸς καὶ ἐλάττωσις, which he quotes in his commentary on canon 3, to his own view that Constantinople has 'equal prerogatives' – τὰ ἴσα πρεσβεῖα (the phrase used in canon 28 of Chalcedon) and he concludes that in fact the Bishop of Constantinople was superior to the Bishop of Old Rome. How does Balsamon prove this superiority? Commenting on canon 28 of the Council of Chalcedon, he argues that this canon granted to the patriarch of Constantinople the same prerogatives as those that had once been given to the bishop of Rome. Therefore he should be honoured in the same way. He should have those same privileges that were granted to Pope Silvester by Emperor Constantine. At this point, Balsamon introduces for the first time in an official collection of the Greek Church the forged document known as the Donation of Constantine, which he, of course, like everyone else at that time, held to be genuine. Balsamon argues that in the new circumstances all the prerogatives granted in the Donation of Constantine should now be applied to New Rome and no longer to Old Rome, because Constantine transferred his capital city from Old Rome to Byzantium together with the entire senate and the whole hierarchical structure of the Roman Empire.

Balsamon was not the first to argue for this complete transfer of all the prerogatives from Old Rome to New Rome,[56] but he argued the case forcefully and

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[54] For example, see M. M. Petrovič, *The Nomokanon in XIV Titles and the Byzantine Commentators* (in Greek), (Athens 1970), 179–183. This is quoted by J. Spiteris, *La Critica Bizantina del Primato Romano,* 229. See also P. Magdalino, 'Constantinople and the ἔξω χῶραι', N. Oikonomides (editor), *Byzantium in the 12th Century,* (Athens 1991), 182ff.

[55] RP, vol. II, 175; PG, vol. 137, col. 321.

[56] J. Spiteris mentions Anna Komnene as holding similar views in her *Alexiad* (I, 13, 48). He also discusses the similar views of John Kinnamos, secretary of Manuel I Komnenos, and supporter of the official ideology about the Byzantine Empire. *La Critica Bizantina del Primato Romano,* 195ff.

backed it up with his interpretation of the Donation of Constantine. His argument can be summed up as follows:

1 The same emperor who had given the privileges to Rome in the first place transferred the capital city of the empire to Constantinople, constituting Constantinople as the queen of all cities.
2 The order of precedence of bishops has always been based primarily on the relative importance of the episcopal city.
3 Canon 3 of the First Council of Constantinople and canon 28 of the Council of Chalcedon, as well as canon 36 of the Council *in Trullo*, all follow from the principle that the bishop's rank depends upon the political importance of the city where a see is located.
4 The actual legislation of the emperors in church affairs demonstrates that New Rome possesses in fact all the prerogatives that Old Rome once possessed.[57]

Balsamon produced the Donation of Constantine to confirm his argument.[58] All the references in the Donation of Constantine to the important fact that Pope Silvester was the successor of St Peter seem to have been lost on Balsamon.[59] For him the primary principle was not the apostolicity of the see – that is, the fact that the see had been founded by one of the twelve Apostles, – but the political situation of the city. This is a key point for understanding the refusal by the Easterners to accept the Roman primacy. Balsamon applies this political principle, not only to the spurious Donation of Constantine, but also to the canons of the Council of Sardica (343) which had laid down that bishops had a right to appeal to Rome in certain circumstances. According to Balsamon such appeals should now be addressed to the New Rome.[60] He maintained that Old Rome had cut herself off from the body of the Church. First of all, politically Rome had fallen into the hands of the barbarians and no longer had ties with the genuine Roman Empire. Secondly, Rome had lost all its privileges because it

[57] For the presentation of this argument I am indebted to J. Spiteris, *La Critica Bizantina del Primato Romano*, 233–234.

[58] The Donation of Constantine is now acknowledged to have been a forgery. Balsamon's use of it is ironical. According to W, Ullmann, it was fabricated in Rome in the eighth century precisely to protect the see of Peter at Rome. The privileges were said to have been given to Pope Silvester because he was the successor of Blessed Peter, the Prince of the Apostles, not simply because he was the bishop of Rome.

[59] The Latin text of the document shows that it is an act of gratitude to St Peter for the emperor's cure from leprosy: 'beneficiis ipsius Beati Petri', 'pontifices, qui ipsius Principis Apostolorum gerunt vices', 'pro honore beati Petri', and so on. PL, vol. 130, cols 245–252. Also in the Greek version, which Balsamon cites in his commentary on *Nomokanon* 8.1, there are all these references to the bishop of Rome being the successor of Peter, of Rome being the see of Blessed Peter and so on. See RP, vol. I, 144–149.

[60] See J. Spiteris, *La Critica Bizantina del Primato Romano*, 234ff.

had fallen into heresy. From this it clear that Balsamon held views about the Roman papacy that were diametrically opposed to the *plenitudo potestatis* that the *Decretum* of Gratian was supporting so effectively in twelfth-century Italy.[61]

So the claim made by the bishop of Rome to constitute an appeal court for the whole of Christendom was unacceptable to the Church of Constantinople. According to Balsamon, it was Rome that had put herself in a state of schism because it was the Church of Rome that had broken off communion with the other four patriarchates. In spite of this, Balsamon held that the canonical structure of the Church still stood. The bishop of Rome retained his canonical place as one of the five patriarchs. However, the general attitude of Balsamon towards the Latins was one of animosity and intolerance, and at one point he even refers to them as heretics, though here he was referring to the Latin patriarch of Antioch, appointed by the bishop of Rome. This was bound to be a source of particular grievance since he himself had been appointed Greek patriarch of Antioch.[62] In his *Responsa* on the privileges of the five patriarchs, he states that Satan had hardened the hearts of the Latins, though in their words they could be smoother than oil.[63] 'He ruled that Latin prisoners could not be given communion in Orthodox churches unless they had totally repudiated Latin dogma and usages. Churches, he continued, may not be shared with heretics, that is Latins, Nestorians and Jacobites. Anathema to those who associate with them.'[64] However, the aim of all anti-Latin legislation and directives (as well as severe anti-Jewish measures) would seem to have been to protect the purity of the Orthodox faith, and it seems to have been inspired by a real fear of the Latins and the Jews in twelfth-century Constantinople.[65] In all this one should not forget the deep-rooted antagonism for the Latins that was felt by the Greek population of Constantinople. It is difficult to define but it is of great impor-

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[61] 'Balsamon's commentaries on the canons themselves have also to be read in conjunction with three other pieces where he develops the same theme: his commentary on *Nomokanon* 8.1 (RP, vol. I, 144–149) and his treatises on the office of *chartophylax* and on patriarchal privileges (RP, vol. IV, 539–540, 553). All four passages basically add up to a single argument: the conciliar canons entitle the see of Constantinople to all the privileges which Constantine had supposedly bestowed on the Papacy. In Balsamon's own words: "As a Constantinopolitan par excellence (Κωνσταντινουπολίτης ἀκραιφνέστατος), and having become by the grace of God, a most vital part of the most holy throne of Constantinople, I desire and I pray that the bishop of Constantinople may have without scandal all the privileges which have been bestowed on him by the divine canons"(RP, vol. II, 285–286)'. P. Magdalino, 'Constantinople and the ἔξω χῶραι', N. Oikonomides, *Byzantium in the 12th Century*, 183.

[62] See his commentary on can. 16 of the Council of Antioch, RP. vol. III, 155–156; PG, vol. 137, cols 1320–22.

[63] See RP, vol. IV, 542ff.; PG, vol. 138, col. 1020, where we read that Balsamon hoped daily for the conversion of the bishop of Rome.

[64] J. Hussey, *The Orthodox Church in the Byzantine Empire*, 308 (referring to Balsamon's response to the patriarch of Alexandria (PG, vol. 138, col. 965).

[65] See P. Magdalino, *The Empire of Manuel I Komnenos*, 384.

tance when considering the relationship between East and West. 'This popular antipathy for the Latins was more than religious in scope but it tended, in the spirit of the age, to find expression in the Church. For in that institution were reflected not only the basic differences of language, but the development of theories and practices characteristic of the mentality of each people'.[66] Theodore Balsamon had great influence in the development of the anti-Latin sentiment in twelfth-century Constantinople and this would be very influential for the future. But he was opposed not only to the Latins. He was rigid in his attitude also towards the Jacobites and 'Nestorians'. 'Do not throw holy things to the dogs' was his uncompromising beginning when considering them.[67]

The attitude of Balsamon towards the Church in the West was not shared by all his contemporaries and was criticised by some. The distinguished canonist, Demetrios Chomatianos, who became archbishop of Ochrid in 1216, had studied law in Constantinople in the late twelfth century and would have known Balsamon personally. He had a much more tolerant and humane attitude towards the Latins. Although he was living in the aftermath of the sack of Constantinople by the Latins in 1204, Chomatianus wanted to stress what the Greeks and the Latins had in common rather than what divided them. They shared the same Holy Scripture, music, icon veneration and adoration of the Holy Cross.[68] Writing, some years after the death of Balsamon, to Sava (1175–1235), first archbishop of the autocephalous Church of Serbia – who had not chosen Balsamon's *Nomokanon* for his own Church, preferring instead the *Syntagma* of John Scholastikos, – Chomatianus observed that a number of people in Constantinople at the time thought that Balsamon showed too much

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[66] D. J. Geanakoplos, *Byzantine East and Latin West* (Oxford 1966), 87. One should not forget, of course, the widespread Western prejudice against the Greeks and their language and the reciprocal ignorance of Latin and Greek, in Constantinople and Rome. As we have seen in Chapter One, the reciprocal ignorance of Latin and Greek was a problem in the fifth and sixth centuries. It continued to be a problem down the centuries and was one of the obstacles to the attempts at reunion.

[67] PG, vol. 138, col. 965. On Balsamon's attitude towards the Latins, M. Angold comments: 'Theodore Balsamon was the first Byzantine lawyer to make a serious study of the Donation of Constantine. Its implications for the nature of the papal primacy were alarming. He was, however, able – with a casuistry that was typically Byzantine – to turn the Donation of Constantine to the advantage of the Church of Constantinople. To do so, he excluded Rome from membership of the Christian commonwealth. He was not so much reflecting public opinion as giving it a new dimension, which would be important for the future. Even if there were the occasional disagreements his legal commentaries would be the authority to which later generations of prelates and canon lawyers would turn. In other words, Balsamon was responsible for working an anti-Latin bias into Byzantine canon law. His work had the influence it did because it coincided with a steady growth of anti-Latin feeling in Constantinople over the twelfth century.' M. Angold, *Church and Society in Byzantium under the Comneni, 1081–1261* (Cambridge 1995), 508. Sir Steven Runciman thought that 'the growth of popular animosity was the single most important factor in the estrangement of Byzantium from the West'. S. Runciman, *The Eastern Schism* (Oxford 1955), 157.

[68] See J. Hussey, *The Orthodox Church in the Byzantine Empire*, 308, where she cites Chomatianos from PG, vol. 119, cols 960–964.

severity and bitterness towards the Latins and that he was not justified in thinking them excommunicate.[69] There can be no doubt, however, that Balsamon's high reputation gave authority to his view of the Latin Church which, in any case, would have been shared by many of his contemporaries in twelfth-century Constantinople. His influence increased with the passage of time until it later came to be an accepted fact that the schism was fully in existence in Balsamon's time.

Balsamon's harsh and uncompromising attitude towards the Latins is thought by some to have played an important part in the development and in the hardening of schism between the Eastern Church and the Church of Rome. According to Sir Steven Runciman, Theodore Balsamon should be considered one of the strongest influences against any chance of reconciliation between the East and the West. 'If one wishes to find a villain on the Orthodox side for the development of the schism', writes Runciman, 'Balsamon is a far stronger candidate than either Photios or Keroularios. Hitherto the chief asset of the Orthodox in the controversy had been their doctrine of economy, the charity that enabled them to overlook and even condone divergencies in the interests of peace and goodwill. But Balsamon was a lawyer; and lawyers like things to be cut and dried. Charity is not one of their characteristics'.[70] Other writers agree with this assessment of Balsamon, particularly because of the influence that Balsamon's writings had in his own lifetime and in later generations.[71]

Canon Law with particular reference to the clergy and to marriage

Having considered the vision of the structure of the Church and its government, that is, the ecclesiology, that lies behind the canonical commentaries of Theodore Balsamon, I would now like to make some observations on what canon law was doing within and for the Christian community. What did Balsamon think were the functions of law in the Church? What the canon law was dealing with can, of course, be seen quite clearly in the fourteen titles of the systematic *Nomokanon* itself, though, to get a complete picture of the canon law, one has to examine also the chronological collection of canons that was formally sanctioned by canon 2 of the Council *in Trullo* in 691–692. Balsamon's commentaries, as we have seen, deal with both of these collections. One also

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[69] See C. Gallagher, 'Gratian and Theodore Balsamon: Two Twelfth-Century Canonistic Methods Compared', N. Oikonomides, *Byzantium in the 12th Century*, 84. For the letter of Archbishop Demetrios Chomatianos, see *Demetrios Chomatianos, Letters*, PG, vol. 119, cols 958–960; also PG, vol. 119, cols 981–984, quoted by J. Hussey, *The Orthodox Church in the Byzantine Empire*, 308.

[70] S. Runciman, *The Eastern Schism*, 138.

[71] J. Spiteris, *La Critica Bizantina del Primato Romano nel secolo XII.*

gets some idea of the importance of any particular topic from the number of chapters that are contained under each Title.

What did Balsamon think about the function of this collection? He was able to relate the law to the concrete problems of his time and in this sense his writings had a very practical slant. As one writer has observed, 'Balsamon's commentaries have the great merit of providing a guide to what an influential churchman saw as the problems of his time. The ones that he keeps coming back to are: ecclesiastical jurisdiction and discipline; the clergy as an order in society; monks and monasteries; lay piety and marriage and morals. Balsamon presents these as living issues, providing their historical background, and the arguments which surrounded them, the official position taken, and his own views. These are often confused. He was all too aware of the gap that existed between the ideal and the reality of the clergy's role in Byzantine society. He was also realistic enough to allow that there would always be discrepancies. His discussions provide an insight into the day to day problems confronting a bishop in the twelfth century'.[72]

One of the main functions of canon law that is apparent in the canons themselves and in Balsamon's commentaries is the reforming function of the law. Balsamon did think that the law of the Church should guard against low moral and spiritual standards. Certainly the law should protect the clergy but it should insist too on high moral standards, particularly for bishops and priests. They should not engage in secular occupations. He also frequently condemns the prevalence of simony. Much of the law was also concerned with protecting the clerical status and establishing clear boundaries between the laity and the clergy. In this Balsamon was a stout defender of the privileged status of the clergy as a spiritual *élite* in the church responsible for the welfare of society. He defended what we would now term a very 'clericalised' society in which the clergy were to be clearly separated from lay society. He also limited strictly lay participation in church services: this was the prerogative of the clergy.[73] There was no question of his allowing women to enter the sanctuary or aspire to holy orders.[74]

Much of the legislation of Emperor Manuel I Komnenos was to bring about monastic reform and root out simony and corruption, and Balsamon gave his full support to these imperial attempts at reform. He also approved of the imperial and patriarchal authority over monasteries, at times to the detriment of the rights of the local bishops. There is little evidence to make us think that the imperial legislation in such matters was considered by canonists to be an undue interference by the civil authorities in the affairs of the Church. As a modern historian has noted: 'Balsamon and the other twelfth-century canonists them-

[72] M. Angold, *Church and Society in Byzantium*, 148.

[73] See M. Angold, *Church and Society in Byzantium*, 152–153.

[74] See M. Angold, *Church and Society in Byzantium*, 430–431.

selves reflect a new concern on the part of the twelfth-century Church to tighten up its rules'.[75]

Another function of the law that was prominent in twelfth-century Constantinople was the safeguarding of the true faith and protection against heresy. Here the *Synodikon of Orthodoxy* is indicative of the climate of the times. This is a liturgical text containing lists of those to be praised for protecting Orthodoxy and of anathemas against heretics. It was read out in church every year on the anniversary of the final restoration of the ikons in 843, the Feast of Orthodoxy. It supplemented the decrees of the seven ecumenical councils in anathematizing heretical teachers and heretical teachings. The text was updated three times under Manuel I Komnenos to anathematize the heretics of the period. These synods under Manuel I in 1157, 1166 and 1170 reveal a certain spirit of intolerance. Balsamon shared this intolerance. In fact, one gets the impression that the 'guardians of orthodoxy' in Constantinople were ruthless in their zeal for the true faith and in their requirement of conformity of speech and dress. There was little of what we would now call intellectual freedom. Twelfth-century Byzantium was no liberal society.[76]

Who were these guardians of orthodoxy? Paul Magdalino argues persuasively that: 'The leading voices of Orthodoxy in the twelfth century were the episcopal and cathedral clergy. We may confidently conclude that the persecuting mentality of the twelfth-century sources had a lot to do with this group's high cultural profile, and represented their determination to consolidate their position and impose the values of their educated, metropolitan milieu on society as a whole'.[77] This was the social and clerical group to which Theodore Balsamon belonged and in which he played a very influential role, as is clear from his appointment to the key position of *Chartophylax* of Hagia Sophia and his relationship with both the Emperor Manuel I and the Patriarch Michael III Anchialus. It is, in fact, to Balsamon that we owe our knowledge of quite a number of cases of prosecution for heresy and oppression in the twelfth-century, because he cites them in his commentary, and he is rarely if ever critical of 'our mighty and holy emperor'. He was strongly opposed to the 'Bogomils' who wandered around the cities because he thought they posed a threat to orthodox faith.[78]

Another important function of canon law lay in the organization and the running of the ecclesiastical courts. Here canon law provided the rules for pro-

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[75] P. Magdalino, *The Empire of Manuel I Komnenos*, 384.

[76] See P. Magdalino, *The Empire of Manuel I* Komnenos, especially 382–412: 'A Twelfth-Century Renaissance?' This is a well-documented discussion of the dual aspect of twelfth-century Byzanzium in terms of 'enlightenment and repression'. See also M. Angold, *Church and Society in Byzantium*, 468–501.

[77] P. Magdalino, *The Empire of Manuel I Komnenos*, 388.

[78] The Bogomils were members of a dualist sect that fostered a very ascetic life and denied many of the basic doctrines of orthodox Christianity.

cedure, for the competence of tribunals and for ecclesiastical jurisdiction. In this Balsamon made an important contribution by his revision and clarification of the *Nomokanon*. 'As a result, the ecclesiastical courts were able to use civil law more freely than in the past. This widened the scope of ecclesiastical justice. Balsamon's great achievement was to bring canon law up to date. His solutions took into account not only civil law in the shape of the *Basilika*, but also recent imperial legislation. His work was the culmination of a revision of canon law going back to the eleventh century'.[79] A whole range of moral offences were also considered to fall under the jurisdiction of the ecclesiastical courts because the bishops and the clergy were held responsible for the moral and spiritual well-being of society and many of the canons traditionally dealt with such matters. This led to confusion concerning which tribunal was competent for which crimes and offences. Balsamon considered the ecclesiastical courts competent for a whole range of moral offences 'because of their spiritual implications'. 'This had, in a sense, always been true, but the development of canon law created a greater awareness of the possibilities. More to the point Balsamon created an instrument that facilitated the application of canon law'.[80]

Eastern canon law and the clergy

Patristic teaching proposed continence as particularly fitting for the priest because of the dignity of virginity and the need for the priest to be completely detached in order to do God's work more effectively. However, the Greek Church permitted the ordination of married men and they were permitted to live as married men. The *Nomokanon in XIV Titles* has very clear legislation on the legitimacy of clerical marriage, one of the clearest statements on the subject being canon 13 of the Council *in Trullo*. We have already discussed this in some detail in Chapter Two. Balsamon accepts this canon as an expression of the tradition that the Church has followed from Apostolic times. In his view it is the Church of Rome that has changed. The wording of the Trullan canon would seem to imply that, before the seventh century, there was no general law of *celibacy* for the clergy even of the Roman Church, since it presupposes that deacons and presbyters would have wives, though they were not permitted to have sexual intercourse. In fact, it was from the end of the seventh century onwards that the East and the West can be seen to follow quite distinct paths with regard to clerical celibacy. Justinian I had forbidden the appointment to the episcopate of married men who had children and had formally limited the episcopate to men who were celibate, widowers, or separated from their wives.[81] This impe-

[79] M. Angold, *Church and Society in Byzantium*, 148.
[80] M. Angold, *Church and Society in Byzantium*, 151.
[81] *Codex* I, 3, 41, 2–4 (534 AD) in CJ, 26; *Novella* VI, 1, 36 (535AD) in *Novellae*, 36.

rial legislation was taken over by the Council *in Trullo* in canon 12 which prohibits a bishop from cohabiting with his wife after his episcopal ordination. In that canon it is noted that 'in Africa and Libya and other places the local bishops, most beloved of God, do not renounce living with their wives, even after ordination, thereby causing offence and scandal to the people'. The Greeks will not permit this: 'we are resolved that henceforth no such thing should be done'. The twelfth-century canonists are aware that this canon is contrary to canon 5 of the *Apostolic Canons:* 'Let not a bishop, presbyter, or deacon put away his wife under pretence of religion; but if he put her away, let him be excommunicated; and if he persists, let him be deposed'.[82] Zonaras explains this changing of an old tradition as follows. The early Fathers realized that at the beginning when the faith was not yet fully developed the Church had to be rather lenient and not make requirements that were too severe for people emerging from paganism and Judaism. So even bishops were permitted to go on living with their wives. However, the faith developed and Christians became more mature and able to follow a stricter observance. This is seen in canon 12 of *Trullo* which forbids bishops even to live with their wives.[83] Balsamon agrees with Zonaras in this explanation.[84] In canon 48 the Trullan Council prescribed that 'the wife of one who has been promoted to the rank of bishop, having previously been separated by mutual consent from her husband, shall, after his ordination as a bishop, enter a monastery situated far away from the episcopal residence, and she shall enjoy benefit from the provision made for her by the bishop; and if she proves worthy, she shall be promoted to the dignity of deaconess'. The Trullan Council, however, did not formally prohibit the episcopal ordination of married men, nor did it say anything about having children being an impediment to episcopal ordination. However, canons 12 and 48 of the Trullan Council led to the current practice of only ordaining to the episcopate celibate priests. This Trullan legislation remains substantially the legislation that is followed today by the Orthodox Churches of the Byzantine tradition, as well as the Oriental Orthodox Churches.[85]

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[82] *Apostolic Canons*, canon 5, in Percival, 594.

[83] RP, vol. I, 331–332.

[84] RP, vol. I, 332–333.

[85] By 'Oriental Orthodox Churches', I mean those Eastern Churches which did not accept the teaching of the Council of Chalcedon. There are six: the Armenian Apostolic Church, the Coptic, Ethiopian, Syrian and Eritrean Orthodox Churches, and the Malankara Orthodox Syrian Church. These Churches are in communion with each other but with no other Churches. For a clear and up-to-date account of all the Eastern Churches, see Ronald Roberson, *The Eastern Christian Churches. A Brief Survey*, 6th edition (Rome 1999).

Matrimonial Law in Balsamon

It is clear from the medieval canonical collections of the East and of the West that each part of the Church had already elaborated its own discipline and legislation on marriage well before there was any division between Rome and Constantinople – though the Western Church did develop a very contractual approach to marriage in the centuries following Gratian. In the previous chapter I discussed the matrimonial legislation of the Western Church as this was drawn up in the *Concordia Discordantium Canonum* of Gratian. I looked at three aspects of the legislation: the nature of Christian marriage, the indissolubility of Christian marriage and the possibility of divorce and re-marriage, concluding with a brief discussion of mixed marriages according to Western canon law. I will now follow the same line of inquiry with regard to Balsamon.

Marriage formed an important part of the church's pastoral responsibilities and the rights of women (at least as far as marriage was concerned), and of widows in particular, were protected by the canon law. There are sound reasons for thinking that problems concerning marriage and divorce provided a large part of the ecclesiastical courts in the twelfth century and later.[86] Balsamon displays in his commentaries a sound knowledge of civil law as well as of canon law and this seems to have been a characteristic of twelfth-century canonists in Constantinople. In earlier times it was the consent of the parents that carried greatest importance but Balsamon stressed the necessity for having the consent of the parties to the marriage. 'Balsamon was at great pains to underline the importance to marriage not only of the church blessing, but also of the consent of the parties, and not just their parents'.[87] It should be remembered that Balsamon, as *chartophylax* of Hagia Sophia in Constantinople, had special responsibility for matrimonial affairs and litigation. It was the responsibility of the *chartophylax* to issue marriage licences to priests for the celebration of marriage. This is not the place to provide a detailed study of matrimonial legis-

[86] See M. Angold, *Church and Society in Byzantium under the Comneni*, 419–425, for a discussion of the marriage litigation recorded in the dossiers of Archbishop Demetrios Chomatianos and Bishop John Apokaukos. These contain a large number of divorce petitions that had come before the episcopal courts in the early thirteenth century and Angold thinks that there are good reasons for thinking that this was also the case in twelfth-century Constantinople. 'One can only admire', writes Angold, 'the finesse and humanity which Demetrios Chomatianos and John Apokaukos brought to their treatment of divorce cases. They paid special attention to the needs of women. They subscribed to the notion of a degree of equality of the sexes and recognized that women had special needs'. 420. See also Patricia Karlin-Hayter, 'Indissolubility and the "greater evil". Three thirteenth-century divorce cases', R. Morris (editor), *Church and People in Byzantium*, 87–105.

[87] M. Angold, *Church and Society in Byzantium*, 414, where he cites RP, vol. IV, 171–172, 183, and 187. In Roman law minors required the consent of their parents or guardians for marriage; otherwise any attempted marriage was considered invalid. (*Digest*, 23, 1, 11,13). According to St Basil, children who married without the consent of their fathers were committing fornication (St Basil, canon 42).

lation in twelfth-century Constantinople. Enough has been said, however, to show that marriage and matrimonial litigation formed an important part of what the canon law was doing at the time. It is also clear that Balsamon stressed the humane approach of the canon law in this matter in contrast to the more severe civil law.

In Chapter Two we discussed in some detail the legislation of the Church of Constantinople concerning marriage and divorce.[88] The civil laws on divorce and re-marriage that we enumerated were, by and large, taken over into the *Nomokanon in XIV Titles* and the conciliar canons and patristic texts were included in the chronological collection of canons. I will now turn to Balsamon's comments on some of these.[89] In his commentary on the *Nomokanon* he discusses the civil laws that deal with divorce,[90] and in the chronological commentary he deals with the conciliar canons and the canons from the Fathers. There are many canons which prohibit divorce. The following are a few examples:

Apostolic Canons, canon 48: 'If any layman puts away his wife and marries another, or one who has been divorced by another man, let him be excommunicated'.[91] Trullan canon 87: 'She who leaves her husband to go with another man is an adulteress. And he who leaves his wife for another woman is an adulterer according to the word of the Lord'.[92] Trullan canon 93: 'A woman who when her husband does not return home, before she is certain he is dead, takes another man commits adultery. But when the man returns he may receive her back, if he so chooses'. St Timothy: question 15: 'If one's wife be possessed to such a degree, as that she has to be bound with irons, and the man cannot control himself, may he marry another? Answer: I can only say that it would be adultery to do so'.[93]

From these canons it is clear that divorce was prohibited by the canons, unless there was a valid reason.[94] The general direction of the Eastern canonical tradition is also clear. There could be valid reasons for divorce and, while re-marriage after divorce is forbidden in general, restoration to communion without separation from the second spouse is possible in certain circumstances.

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[88] Chapter Two, 73–79.

[89] For a detailed discussion of Balsamon's comments on legislation dealing with adultery and divorce, see G. Stevens, *De Theodoro Balsamone*, 231–253.

[90] *Nomokanon* 13,3, PG, vol. 104, cols 1189–1194.

[91] PG, vol. 137, cols 133–136, where Balsamon discusses canon 48 of the *Apostolic Canons*, and interprets this fourth-century text according to later legislation (G. Stevens, *De Theodoro* Balsamone, 239). Here Balsamon discusses divorce and notes that divorce must always have a judicial decision for it to be valid in law. Balsamon is commenting on the legitimate causes of divorce.

[92] RP, vol. II, 507ff.

[93] RP, vol. IV, 344; PG, vol. 138 cols 900–901. Balsamon teaches that the marriage is an impediment to another marriage. However, he notes that Emperor Leo VI permitted a marriage to be dissolved if the wife was permanently mad. In citing the constitution of Emperor Leo VI, Balsamon shows that he regards madness as a legitimate cause of divorce and subsequent re-marriage.

[94] *In Trullo*, canon 87; St Basil, canon 35.

There is no convincing evidence to show that the Church consistently prohibited divorce and re-marriage from the beginning, and many Christians in the early centuries continued to regard marriage as dissoluble.[95] As we have seen in Chapter Four, in the West St Augustine, in the fifth century, taught clearly that the New Testament references to divorce authorized separation, but not re-marriage, and this was the interpretation that would be followed in the Church in the West, where prohibitions of re-marriage following divorce gradually became increasingly effective. Throughout his commentary on all these laws and canons it is clear that Balsamon regarded the marriage bond as an impediment to any further marriage while both spouses were alive. However, he accepted the fact that divorce was permitted by law in certain circumstances. The divorce had to be authorized by a judge and only for reasons that were valid in law. Such reasons were: monastic profession, adultery, madness and episcopal ordination. Balsamon held that the adultery of the wife was a bar to any further marriage, whereas the adultery of the husband was a bar to his marrying his accomplice. Adultery was also a bar to a man's being admitted into the clergy. As we have seen, the Roman law promulgated by the Christian emperors permitted re-marriage after divorce. This was never accepted by the Church, but neither does it seem to have been formally condemned. Concerning successive marriages, the laws laid down in the *Tomos of Union* seem to have been effective.[96] In practice the Church very rarely granted permission for a third marriage. Balsamon accepted and commented on this civil legislation, though he was very opposed to third marriages.

Mixed marriages

This question is treated in *Nomokanon,* Title 13. Mixed marriages, that is marriages between an Orthodox Christian and a person who is not an Orthodox Christian, were prohibited because it was thought that a true marriage by definition simply could not take place if both parties did not share the same faith. A number of the early councils in the East specifically prohibited marriage between a Catholic and a heretic.[97] For example, canon 14 of the Council of Chalcedon (451) c. 14:

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[95] See J. A. Brundage, *Law, Sex and Christian Society in Medieval Europe* , 96–97.

[96] The *Tomos of Union* was the decision of a local council held in Constantinople in 920. This banned fourth marriages, and restricted the possibility of third marriages. Papal representatives were present at this council. See ODB, vol. 3, 2093.

[97] For example, Laodicea, canon 10: 'Thou shalt not marry a heretic'. Laodicea, canon 31: 'It is not lawful to make marriages with heretics, nor to give our sons and daughters to them; but rather to take them if they promise to become Christians'. Carthage, canon 21: 'Likewise it seems good that the sons of clergymen should not be joined in matrimony with gentiles and heretics'.

> Since in certain provinces readers and cantors have been allowed to marry, the sacred synod decrees that none of them is permitted to marry a wife of heterodox views. If those thus married have already had children, and if they have already had the children baptised among heretics, they are to bring them into the communion of the Catholic Church. If they have not been baptized, they may no longer have them baptized among heretics; nor indeed marry them to a heretic or a Jew or a Greek, unless of course the person who is to be married to the orthodox party promises to convert to the orthodox faith. If any one transgresses this decree of the sacred synod, let him be subject to a canonical penalty.[98]

These canons are to be found both in the *Dionysiana* and in the Greek *Synagoge*; so the early approach to mixed marriages was much the same for Rome as for Constantinople. The Trullan Council of 691, in canon 72, contains a similar prohibition, but it is more restrictive than previous legislation:

> No orthodox man shall be allowed to marry an heretical woman, nor any orthodox woman an heretical man; and if such a thing is found to have been done, the marriage is to be considered invalid and the unlawful cohabitation to be dissolved. For one must not mix things which should not be mixed, nor join a wolf to a sheep and the portion of Christ to the lot of sinners. If any one trespasses against our decree, he shall be excommunicated. But in the case of those joined in lawful marriage whilst still unbelievers, not yet admitted to the fold of the orthodox, should one of them thereafter choose the good and come to the light of truth, whereas the other be detained by the bonds of error and choose not to gaze upon the divine splendour, if the unbelieving woman is content to cohabit with the believing man, or again, the unbelieving man with the believing woman, they shall not be separated, in accordance with the divine Apostle: 'For the unbelieving husband is made holy through his wife, and the unbelieving wife is made holy through her husband' (1Cor 7:14).[99]

This canon has caused serious difficulties with regard to its interpretation. The canons of Laodicea prohibits all Christians from marrying heretics. Canon 14 of Chalcedon urges the application of this general norm in a particular way to readers and chanters. Canon 72 of the council *in Trullo* goes much further than the previous legislation. It was for centuries held in both the East and the West that the marriage of a baptized Christian with an unbaptized person was invalid, but canon 72 says that the same is the case if the other party be a heretic, even though baptized. If this is what the canon means it makes heresy a diriment impediment to marriage.[100] This is clearly what Balsamon maintained in his commentary. He takes a very strict line on mixed marriages. This has never been the

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[98] DEC. vol. I, 93–94. The first part of this canon is found in Gratian, D.32, c.15.

[99] G. Nedungatt and M. Featherstone, *The council in Trullo Revisited*, 153–154.

[100] It is interesting to note that Balsamon, in his commentary on this canon, applied it to mixed marriages with Latins.

law of the Latin Church and even today it is not the practice of the Orthodox Churches. Orthodox Churches allow the marriage of its members with Lutherans and with Roman Catholics, in certain circumstances.[101]

In these last two chapters I have been discussing the canonical commentaries of Gratian in Bologna and Balsamon in Constantinople. These commentaries were produced in the twelfth century, but the traditions that were embodied in their canonical collections were established gradually during the first millennium, when there was full communion between Rome and Constantinople. This is plain from the authorities to which both canonists refer. It is, therefore, clear that by the twelfth century two different traditions had been formed. In the Latin Church of the West, while non-sacramental and non-consummated marriages could, for special reasons, be dissolved, the prohibition of re-marriage after divorce applied absolutely to a marriage between two baptized Christians, which had been consummated. So any civil laws passed contrary to this teaching were considered ineffective. By contrast, in the Orthodox East, even a consummated marriage between Christians could be considered dissolved in its own failure through the disappearance of true *maritalis affectio.* Love could die. Such a dissolution could be acknowledged by the Church and a second union permitted, though this second union would not be considered a fully sacramental marriage and would be linked with a penitential rite. A recent writer has made the following comment on this difference between the two traditions:

> The crucial difference in these two disciplines lies not in the fact that one accepts divorce and the other does not, but that the latter [the former?], the Orthodox, approaches the reality of human failure in this area from a biblical, personalist, human point of view, while the former approaches it from a biblical, legalist point of view, trying to apply the perceived law of God.[102]

In these pages I have paid particular attention to three aspects of the matrimonial law of the two Churches. These have been from the beginning in general agreement about the sacramental nature of Christian marriage: it is a communion of life and love in which the two persons are consecrated by the Holy Spirit to live together in mutual harmony and bring children into the world. However, while sharing this teaching on what marriage is, the two Churches have drawn different conclusions about two very practical realities. Precisely because marriage implies a communion of life and love, the Orthodox are reluctant to

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[101] Serious difficulties have been created by treating this canon 72 as still valid and imposing a diriment (that is, invalidating) impediment of *mixta religio* on all members of the Byzantine Orthodox Churches. The Orthodox hierarchies have maintained that this is no longer considered a diriment impediment – by using *oikonomia* – whereas a number of Catholics maintained that it was still binding on the Orthodox because it had never been abrogated.

[102] T. J. Buckley, *What Binds Marriage?* (London 1997), 42.

permit mixed marriages, because in such cases full Eucharistic communion would not be possible between the spouses. Marriage within the same faith community is the ideal. The Catholic Church agrees that this is the *ideal* and prohibits mixed marriages in general, but is willing to permit them for special reasons because of the fundamental right a person has to marry.[103] Again, while in agreement about the fundamental indissolubility of Christian marriage and the desire to be faithful to the Lord's command, the two Churches have drawn up different canonical procedures about what to do when a marriage does in fact break down.[104]

General Conclusion

In these last two chapters I have examined in some detail the work that was produced in Bologna and in Constantinople by the two most distinguished twelfth-century canonists. There can be no doubt that Gratian and Balsamon influenced the development of canonical science, both in the West and in the East, in ways that would be difficult to exaggerate. They did more than this. Their work had a practical influence on the life of the church. They are clear proof that the work of canon lawyers, then as now, should not be regarded as merely academic; their formulations of the law can have far-reaching effects on the day-to-day life of the Christian community. The achievements of Gratian and Balsamon give rise to a number of questions. What would have happened if Gratian had not provided such a solid legal foundation for the classical ecclesiology and highly centralized monarchical papacy that was to develop so rapidly in the twelfth and thirteenth century? What if Balsamon had not borne such a grudge against the Latins and had been more open and ecumenical in his approach to the see of Rome? Perhaps the attempts of Emperor Manuel Komnenos to have a serious dialogue with Pope Alexander III would have led to closer union between Constantinople and Rome. Perhaps Pope Innocent III

[103] CIC, canons 1124–1129; CCEO, canons 813–816.

[104] 'A person bound by the bond of a previous marriage, even if not consummated, invalidly attempts marriage'. CIC, canon 1085, par. 1. To understand fully the Catholic Church's canonical treatment of this question, it should be noted that not every marriage of a Catholic is considered to be a sacrament, and non-sacramental unions of Catholics may be dissolved in certain circumstances. If not consummated, even sacramental marriages may be dissolved. See CIC, canons 1141–1149; canons 1697–1706. See also CCEO, canon 1384: 'In order to obtain the dissolution of a non-consummated sacramental marriage or the dissolution of a marriage in favour of the faith, the special norms issued by the Apostolic See are to be followed'. Moreover, the fact that there are a number of marriages of Catholics that are not canonically valid contracts has given rise to a highly developed jurisprudence concerning the declaration of nullity in certain circumstances. For a clear discussion of this question, see Ralph Brown, *Marriage Annulment in the Catholic Church*, 3rd edition (London 1990).

would have been more open to the overtures from the East for the union of the two Churches.

Gratian's *Concordia Discordantium Canonum* and Balsamon's Commentaries are monuments to two very different canonistic traditions. Each is firmly rooted in the conciliar canons of the Early Church but each embodies its own distinct ideas about church government and church discipline. Both writers shared the same fundamental belief about the nature of the Church as mystery and sacramental reality. Both shared the same faith in the Trinity and in Christ and his Gospel of salvation. However, with regard to the external life of the Church and its administration they were poles apart. To our modern way of thinking in the West, Balsamon exaggerated what he held to be the God-given powers of the emperor within the Church. Yet, on the other hand, he did stress the importance of the five patriarchates as structures for realizing an ideal of communion and cooperation between the Churches. For this reason, he maintained that patriarchs and bishops, when important decisions were to be taken, must never act alone. They must always act together in council, and all decisions must be taken with reference to the canons of the Fathers and of the councils of the Church. Such collegial sentiments would be shared by many Christians today in both East and West. He also thought that the primacy of the bishop of Rome, the patriarch of the West, could have a meaningful role, provided this was understood within the framework of patriarchal (pentarchical) collegiality and the communion of the churches.

In the West, however, a highly centralized, monarchical mode of exercising the Petrine ministry developed steadily particularly from the eleventh century onwards. Even before the ninth-century False Decretals, ecclesiastical discipline throughout the Western Church gradually came to be governed increasingly by papal decretal letters from the centre, rather than by regional conciliar canons. From the time of the Gregorian reform movement onward, the Roman See tended more and more to treat all the local churches of the West as if they formed part of a metropolitan province, with the bishop of Rome as the supreme metropolitan. Gratian inherited this tradition, crystallized it and laid firm foundations for its further development.[105] Gratian and Balsamon can, therefore, be seen as key representatives of two diverse canonistic traditions, which grew out of and contributed to different ecclesiologies, contrasting visions of the structure of the church. This conclusion comes, of course, as no great surprise. The divergence in outlook and attitude goes back to Chalcedon and beyond, as recent studies have demonstrated.[106] However, Gratian and Balsamon provide

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[105] See R. W. Southern, *Scholastic Humanism and the Unification of Europe* (Oxford 1995), especially Part Two, chapter 9, 283–318, for a good discussion of the importance of Gratian in the development of Roman centralization.

[106] On the different approaches to the theology of the church, See Y. Congar, *After Nine Hundred Years: The Background to the Schism between the Eastern and Western Churches* (New

an instructive illustration of how different ecclesiologies are taken over by canon lawyers, brought into sharper focus and consolidated, with legal precision, into juridical structures and procedures. Procedures form attitudes and the structures themselves that we live with condition the way we think and act.

So far in this book I have been talking about East and West, and I have concentrated on the Church of Constantinople and the Church of Rome. This could give the impression that in these two Churches were to be found the majority of Christians living in the Middle Ages. This would be a mistaken impression. In fact, Constantinople stood more or less midway between the Latin Church in the West and two large and flourishing ancient Christian Churches of the East, in Syria and in Persia, with missions stretching out to India and to China. These Eastern Churches had, over the centuries, developed their own structures of government, their own church discipline and their own canon law. They had also produced some very talented canon lawyers. Two of these – Bar Hebraeus of the Syrian Orthodox Church and Ebedjesus of the Assyrian Church of the East – will be the topic of the next chapter.

York 1959); W. De Vries S.J., *Orient et Occident. Les structures ecclésiales vues dans l'histoire des sept premiers conciles oecuméniques* (Paris 1974).

CHAPTER SIX

Bar Hebraeus and Ebedjesus: The Development of Canon Law outside the Empire

So far I have dealt with the canon law in the West and the development of the papacy as supreme legislative authority in the Western Latin Church. I have discussed also the development of synodical and imperial law in Constantinople, along with the idea of the pentarchy, as Balsamon saw it. In the third chapter I considered briefly the origins of canon law in the Slav countries by discussing the work of Methodius in Moravia in the ninth century. But what was the state of the canon law of those other great Eastern Churches outside the Byzantine Empire – the Christians in Syria and Persia, in Egypt and in Armenia? How did these Churches fare under the domination of Islam? How did canon law develop in the Islamic environment? In what way did the Arab and Syriac canonists adapt the Church's law to fit in with their Islamic rulers? There is also the important point that these Churches were made up of people who did not feel they were heirs to the Roman Empire. It would be interesting to see how church law developed in Christian communities that were outside the spheres of influence of the papal monarchy of Rome, on the one hand, and the Byzantine Empire on the other.

In these Churches of the East there are at least four important medieval canonical collections that merit attention:

a) The *Nomokanon* of Bar Hebraeus of the Syrian Orthodox Church (written in Syriac between 1253 and 1264).
b) The two canonical collections of the Assyrian Church of the East, by Ebedjesus (Abdisho Bar Berikha).
c) The Coptic *Nomokanon* written in Arabic by Ibn al 'Assal (c. 1250, in Egypt).[1]

[1] The Coptic *Nomokanon* of *Al-Safi Ibn al-'Assal* is an important example of medieval canon law outside the Empire, a complete manual of law for the Jacobite community of Egypt. It provides information about the state of the Coptic Church in the middle of the thirteenth century. The sources for this collection include canons from the Council of Nicaea (325); canons from the regional councils: Ancyra, Neocaesarea, Gangra, Antioch, and Laodicea, as well as the Pseudo-Apostolic canons of Hippolytus and the *Didaskalia*, and some canons from St Basil. It also provides Arabic translations of the ninth-century Byzantine *Procheiros Nomos* and the fifth-century compilation of Roman Law, called the *Syro-Roman Lawbook*.

d) The monumental Armenian *Constitution of the Courts,* or *Judicial Book,* produced by Mkhithar Goš (1130–1235) in about 1184 which included civil and ecclesiastical law.[2]

These canonical collections were produced quite independently of each other. Although they contain many of the canons of the early church councils, they seem to have no direct relationship with the Greek and Latin canonical collections that we have been discussing so far. Bar Hebraeus deals extensively with property rights, inheritance, judicial and penal law, and in this he differs from the other collections. Bar Hebraeus and Ibn al Assal both take over legislation from contemporary treatises on Muslim law. I have decided to look at two important Churches of the East in the Middle Ages: the 'Church of the East' (sometimes referred to as Assyrian, Nestorian, East Syrian) on the one hand, and the Syrian Orthodox Church ('Jacobites', 'Monophysites') on the other.[3] It seemed useful to examine the canon law of these Churches and compare this with what we have been looking at in Rome and Constantinople. The task has been made possible because each of these Churches produced, in the period immediately following the period we have been considering, an outstanding canonist whose work enables us to get a clear idea of how canon law had developed outside the Roman and Byzantine Empires. Both Bar Hebraeus and Ebedjesus allow us to see the law as it had developed within the two Churches. This development can be seen in the canonical sources that they quote. What then was the traditional and customary law in these Churches? To provide a context, I shall preface the discussion of each canonist with a brief description of the Church to which he belonged and the circumstances in which he produced his canonical collection.

The Syrian Orthodox Church

What is now known as the Syrian Orthodox Church had its origin in the Christian community at Antioch which became the chief centre of Christianity in the East, with authority over Syria, Phoenicia, Arabia, Cilicia and Mesopotamia.[4] At the First Council of Nicaea, in 325, Antioch was recognized, along with

[2] An edition in Armenian was published by Chosrov Thorosian (Erevan 1975). Professor Robert Thomson has published an English translation and commentary of this *Nomokanon*. Robert W. Thomson, *The Lawcode [Datastanagirk] of Mxit'ar Goš* (Amsterdam 2000). See Messrob K Krikorian, '*Ius Graeco-Romanum* and Canon Rules in the Tradition of the Armenian Church', R. Coppola (editor), *Incontro fra Canoni d'Oriente e d'Occidente* (Bari 1994), vol. I, 165–191.

[3] See J. M. Fiey, DHGE, vol. 26 (Paris 1997), cols 626–627.

[4] Roughly equivalent to modern Syria, Lebanon, Saudi Arabia, Southern Turkey and Iraq.

Rome and Alexandria, as one of the principal churches.[5] The christological formulations of the Council of Chalcedon in 451 caused a split in the community at Antioch, as they also did in Alexandria. As we have already seen in referring to this in Chapter One on the Acacian Schism, the problem revolved around the meaning of the word φύσις (nature) as this had been used by St Cyril of Alexandria (d. 444) and the way it was used at the Council of Chalcedon. According to Cyril, in Christ there was μία φύσις τοῦ Θεοῦ λόγου σεσαρκωμένη (one 'nature' of the Word of God Incarnate).[6] So a number of the Christians at Antioch thought the formula of Chalcedon was contrary to Cyril's teaching; to them the expression, 'two natures in one person', seemed perilously close to saying that there were two persons in the Incarnate Word (the so-called 'Nestorian' heresy). So the Chalcedonian formula was rejected by many of the bishops from Antioch and from Alexandria. This was the beginning of the 'Miaphysite'[7] Church in Syria and in Egypt. Justinian's attempt in mid-sixth century to suppress these Christians in Syria and in Egypt only led to their consolidation into separate Christian communities. Severus of Antioch, one of the outstanding theologians of his time, was the leader of those who thought that the Council of Chalcedon had not remained faithful to the teaching of Cyril of Alexandria. Severus is regarded as the true founder of what became known as the 'Monophysite' Church. He was appointed patriarch of Antioch in 512 but deposed by Emperor Justin I in 518. He died in exile near Alexandria in 538. It was, however, the Syrian monk, Jacob Baradaeus (490–578) who gave the Syrian Orthodox Church its structure and organization. He had spent some years in Constantinople and had become friendly with the empress, Theodora, who was sympathetic to the Miaphysites in spite of Justinian's efforts to suppress them completely in the interests of imperial unity. At her instigation, the Miaphysite patriarch of Alexandria, Theodosius, consecrated two bishops to support the cause of those in Syria who could not accept the christological formulations of

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[5] Council of Nicaea I, canon 6: 'Similiter autem et apud Antiochiam ceterasque provincias sua privilegia serventur ecclesiis'.

[6] Cyril was using the word 'nature' in a sense different from that later used at Chalcedon. Cyril emphasised the 'one physis', one individual substance, in Christ in opposition to what he thought Nestorius was teaching. 'All his thought is directed towards expressing the *unity* of Christ, though at the same time he does not in any way neglect to *distinguish* between Godhead and manhood. The key problem in these struggles is, then, the development of an approach by which both the unity and the distinction can be maintained in Christ, and to find clear linguistic means for expressing this approach'. Aloys Grillmeier, *Christ in Christian Tradition*, vol. 1 (revised edition) (London 1975), 481.

[7] I am using the term 'Miaphysite' as a short-hand way of referring to the 'Syrian Orthodox Church', because the commonly-used term 'Monophysite' does not accurately describe the theological position of these Christians, who wanted to be faithful to the teaching of Cyril of Alexandria (μία φύσις τοῦ Θεοῦ λόγου σεσαρκωμένη). The term 'Monophysite' gives the mistaken impression that they agreed with the teaching of Eutyches (378–454), who denied that Christ's human nature was consubstantial with ours.

Chalcedon. In 542/3 he ordained Theodore for Bostra and Jacob Baradaeus for Edessa.

> According to John of Ephesus, Jacob's diocese extended over the most of the East, where the Monophysite [Miaphysite] cause had been severely weakened by Justinian's persecution. Jacob was tireless in his missionary activity, appointing Monophysite [Miaphysite] bishops in many cities, including Chios, Ephesus and Antioch. Although much of his work was in Asia Minor and along the coasts of the Mediterranean, most of the bishops were drawn from Syrian monasteries, giving the Monophysite [Miaphysite] hierarchy a distinctly Syrian character.[8]

In this way, a new distinct hierarchy was established under the Miaphysite patriarch of Antioch and the Church established by Jacob Baradaeus is still known as the Syrian *Jacobite* Church.[9]

It developed its own liturgy (called 'West Syrian' or 'Antiochene') and other traditions, using the Syriac language spoken by the common people. Communities were also established outside the Empire in Persia. There developed an alternative structure of spiritual authority which became recognized by a very large number of Christians in the Middle East – though not by the other large community that had sympathized with Nestorius, the 'East Syrians', officially known today as the 'Assyrian Church of the East', which will be discussed later in this chapter. In the seventh century the Miaphysites of the Antioch patriarchate joined the Miaphysites of the Persian empire and the post of maphrian was created.[10] Between 633 and 651 AD, Palestine, Syria, Mesopotamia and Persia were conquered by Islam. This freed the Miaphysites from Byzantine persecution and created conditions that favoured the development of their Church. Each Church in the caliphate was treated as a 'millet' or independent religious community, governed by its own legal system. These events confirmed, by means of political frontiers, the division of these large Christian communities from Rome and from Constantinople. Syrian Orthodox scholars

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[8] T. E. Gregory, ODB, vol. 2, 1029.

[9] The leaders of theological thought among the Miaphysites in the fifth and sixth centuries included Timothy Aelurus, patriarch of Alexandria (d. 477), who is venerated as a saint in the Coptic Church, Peter Mongus, patriarch of Alexandria (d. 490), Peter the Fuller, patriarch of Antioch (d. 488), Philoxenus, bishop of Mabbugh (d. 523) and especially Severus of Antioch. According to modern theologians these men 'who gave the movement its solid theological foundation and coherence, were not formal heretics. They repudiated the Eutychian explanation and fully maintained the integrity of the two natures in Christ after the union in the Incarnation, without mixture or confusion.' F. X. Murphy in NCE, vol. 9, 1065. M. Jugie agrees with this opinion: *Dictionnaire de Théologie Catholique*, vol. X, Part II, col. 2228.

[10] J. Assfalg and Paul Krüger, *Petit Dictionnaire de l'Orient Chrétien* (Turnhout 1991), 366. Maphrian means 'fructifier' or 'progenitor'. In the Syrian Orthodox Church this title signified the primate, the one who spreads the Church by ordaining priests and bishops. See J. Payne Smith, *A Compendious Syriac Dictionary* (Oxford 1957), 292.

played an important part in transmitting Greek learning to the Arab Muslim world.[11]

There was a great revival of Syrian Orthodox scholarship in the Middle Ages, when the community possessed flourishing schools of theology, philosophy, history and science. At its height, the Church included twenty metropolitan provinces extending as far to the east as Afghanistan.[12] Around the year 1100, these Syrian Orthodox Christians were liberated for a period by the Crusaders from both Byzantium and the Arabs, and were on their way towards full communion with Rome, but this movement came to an end through the failure of the Crusades. This flourishing missionary Church in the thirteenth century was the Church in which Bar Hebraeus held the prestigious position of maphrian – the second-in-command to the patriarch in Antioch – and in which he had such a distinguished career both as a bishop and as a writer.

Bar Hebraeus – His life and work

Bar Hebraeus – or *Grīgōr bar 'Ebrāyā* (Syriac) or *Grīghōr abū l-Faraǧ ibn al-'Ibrī* (Arabic) – was born in 1226 in Malatiya in modern Turkey (in his time, Melitene in Armenia). Malatiya had by then been under Muslim domination for almost six hundred years. Around the year 1243 the family of Bar Hebraeus moved from there to Antioch, probably on account of the Mongol invasions.[13] Antioch was at that time in the hands of the Crusaders. It may be that his father was a physician of Jewish origin, but this is not certain. The name *Bar Hebraeus* does not necessarily mean 'son of a Hebrew'; it could also refer to his place of origin: 'son of the shore' or 'son of the crossing'.[14] It was at Antioch and then at Tripoli in Syria, at that time a flourishing centre for Arab-Muslim studies, that Bar Hebraeus studied logic and medicine.[15]

He was born into the Syrian Orthodox Church, or 'Jacobite' Church, we have just described, and at the age of twenty while he was still a student, in 1246, he was summoned by Patriarch Ignatius II, and ordained bishop of Gub-

[11] For example, Jacob of Edessa (640–708), George, 'Bishop of the Arabians' (640–724), Moses bar Kepha (815–903), Bishop of Mosul.

[12] See R. G. Roberson, *The Eastern Christian Churches*, 6th edition (Rome 1999), 35.

[13] The tribes of Mongolia (often referred to also as the Tartars or Tatars) had been united under the brilliant leadership of Genghis Khan (d. 1227). In the first part of the thirteenth century Genghis Khan and his successors had created a vast empire, stretching from China to the Adriatic. In 1258 they captured Baghdad and by 1260 were besieging Aleppo, when Bar Hebraeus was bishop in that city. See ODB, vol. 2, 1395.

[14] J. Payne Smith, *A Compendious Syriac Dictionary*, 399.

[15] For the biographical details concerning Bar Hebraeus, see I. S. Assemani, *Bibliotheca Orientalis Clementino-Vaticana* (Rome 1721), vol. II, 244–321. See Carlo Alfonso Nallino, 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo', M. Nallino (editor), *Raccolta di Scritti Editi e Inediti* (Rome 1942), 224.

bos. As a bishop he changed his baptismal name of John to Gregory. Seven years later he was named bishop of Aleppo, an important see in the Syrian Orthodox Church of those days. About ten years later, in 1264, the Jacobite patriarch of Antioch, Ignatius III, nominated him bishop of Tagrit[16] and maphrian for the East, that is, the head of the Eastern region of the Syrian Orthodox Church, a sort of vicar general of the patriarch for Arabia and Persia. This meant that he had jurisdiction over all the Jacobite bishops of the dioceses of what had been the Persian Empire under the Sassanids before the Muslim invasions of 651, and which from the 1260s onwards was the kingdom of the Mongols.[17]

His task as maphrian involved much travel throughout the eastern province of his Church and brought him into contact with many people; it also provided the opportunity to visit and make good use of monastic libraries. His residence was at Tagrit, on the Tigris, but he preferred to stay at the monastery of Mar Mattai, about thirty miles north-east of Mosul, or in Maragheh, (in modern Iran), and that is where he died in July 1286.[18] He seems to have been an affable person, able to get on with all kinds of people, including other Christians who did not belong to his own Jacobite Church. He did not consider the other Churches as 'heretical' because they had different christological formulations. The fact that they were in agreement about the doctrine of the Trinity and the mystery of the Incarnation meant that all were truly Christian in his eyes. He visited Baghdad on several occasions and was on good terms with the Catholicos of the Church of the East, Mar Denkha and his successor, Mar Yaballaha III. He was also on good terms with the Muslim rulers and later with the Mongols.[19] He died in 1286 and his body was brought to the monastery of Mar Mattai. When he died, although he belonged to the Syrian Orthodox Church, his funeral was attended by East Syrian, Greek and Armenian clergy. In fact, the East Syrian Patriarch, Mar Yaballaha III ordered a day of mourning for this 'Miaphysite' maphrian.[20]

Bar Hebraeus lived in difficult and dangerous times. His Church existed in territory dominated by Islam and in his later years he experienced the Mongol invasions and conquests. Yet in spite of all this and of his duties as maphrian, which must have taken up much of his time, he was a man of vast erudition and a prolific writer. He produced books on philosophy, medicine, grammar, his-

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[16] Tagrit, his episcopal see, had been sacked by the Mongols and Bar Hebraeus was able to visit his see as maphrian only in 1277.

[17] The Sassanid Empire was roughly what is now Iran and Iraq.

[18] See J. Bowman and J. A. Thomson, 'The Monastery-Church of Bar Hebraeus at Maragheh in West Azerbaijan', *Abr-Nahrain* 7 (1968), 35–61.

[19] He is said to have acted as a court physician to the Mongol king, Hulagu, and his family after the siege of Aleppo in 1260. F. Nau. in *Dictionnnaire de Théologie Catholique*, vol. II (Paris 1903), col. 402.

[20] E. Herman, DHGE, vol. 16, col. 793.

tory, science and theology, as well as the important canonical collection that we are going to examine. Not perhaps an original thinker, Bar Hebraeus had read widely in both Christian and Muslim sources and he made available to his people their own Syrian literature and traditions, as well as Greek and Arabic writings of their contemporaries.[21] He appears to have been very ecumenical in his outlook and uses freely the writings of authors from both the Byzantine and the 'Nestorian' Churches. He thought that much of the disagreement between the Churches was about words rather than matters of substance.[22] Modern scholarship has also shown how much Bar Hebraeus was influenced by Arabic-Muslim writings on law, science and philosophy.[23] He wrote in Syriac and in Arabic with equal facility and seems also to have known Persian, Greek and Armenian. Because of his learning and the great diversity of his activities, he has been

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[21] The writings of Bar Hebraeus include: a large encyclopedia of Aristotelian and Arabian philosophy and science: *The Cream of Science.* Theological writings include:

a) Dogmatic theology: *The Candelabra of the Sanctuary,* a systematic exposition of Jacobite theology.
b) Moral theology: *Ethicon seu Moralia.*
c) Ascetic Theology: *Directorium Monachorum. The Book of the Dove.*
d) Lengthy commentaries on Holy Scripture, making much use of the commentaries produced by Jacobite and Nestorian scholars.

His historical writings: a universal history from creation until his own time.

1 *Chronicon Syriacum:* political and civil history of the East.
2 *Chronicon Ecclesiasticum.*

According to E. Herman, Bar Hebraeus is at his most original when writing as a historian. He deals with the Syrian Church right up to 1285. The *Chronicon Ecclesiasticum* deals with the history of the *Maphrians of the East* from St Thomas the Apostle to his own time. He depended greatly on the *Universal Chronicle* of Michael the Syrian, the well-known Jacobite Patriarch of Antioch from 1166 to 1199. The *Chronicon* is particularly valuable for the period of the Mongol invasions. See E. Herman, DHGE, vol. 16, col. 793.

[22] He thought that the disagreement was about terminology rather than substance: 'Reliquae vero, quae hodie in mundo obtinent, sectae, quum omnes de Trinitate et incolumitate naturarum ex quibus est Christus absque conversione et commixtione aeque bene sentiant, in nominibus unionis solum secum pugnant.' So he thought that the different groups of Christians were in agreement about the doctrine of the Trinity and about safeguarding the natures from which (*ex quibus*) Christ is, without change or mingling. Therefore he did not consider that the other Churches were heretical, but that they were inaccurate in their formulations concerning the mystery of the Incarnation. See Assemani, *Bibliotheca Orientalis,* vol. II, 291. Bar Hebraeus tells us himself: 'When I had reached the age of twenty, the then living patriarch compelled me to receive the dignity of a bishop. Then it was inevitable for me to engage myself in disquisitions and disputations with the heads of other confessions ... and I became convinced that these quarrels of Christians among themselves are not a matter of facts but of words and denominations ... and I absolutely forsook disputation with anyone concerning confession'. This passage comes from *The Book of the Dove* in the translation by A. J. Wensink, *Bar Hebraeus's Book of the Dove together with some chapters from his Ethicon* (Leiden 1919), 60. It is quoted in Brian E. Colless, 'The Mysticism of Bar Hebraeus', *Orientalia Christiana Periodica,* vol. 54 (1988), 153.

[23] See C. A. Nallino, 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo', M. Nallino (editor), *Raccolta di Scritti Editi e Inediti.* Nallino shows that Bar Hebraeus took many texts from the writings of al-Ghazali, the great Muslim scholar and mystic in Baghdad.

compared with his famous contemporary in the West – the German philosopher and theologian, St Albert.[24]

Bar Hebraeus produced only one canonical work: *The Book of Directives*. It is this that is commonly referred to as the *Nomokanon* of Bar Hebraeus.[25] His aim in this work seems not simply to have been to produce a compilation of juridical texts, but to provide positive direction for the interpretation of these laws and their application in practice. Professor Nallino has shown that the *Nomokanon* was probably compiled in the Western Province (Syria, Palestine, part of Asia Minor and part of Mesopotamia),[26] when Bar Hebraeus was bishop there, and so prior to his being appointed 'Maphrian of the Orient' in January 1264.[27]

In general Islamic rulers tended to respect their Christian subjects[28] and allowed them to follow their own law, provided they paid the tax levied on them. Christians, Jews and Muslims were all considered, in terms of the Quran, 'Peoples of the Book' – the Gospels, the Torah, and the Quran. Much of the litigation among Christians, therefore, had to be brought before the bishop or the patriarch. This was a usage confirmed by caliphs and sultans. As a result, the canon law of the Syrian Orthodox Church had to cover a wider field than canon law in the West. This partly explains the nature of the *Nomokanon* of Bar Hebraeus, and why so many 'civil' matters are treated.[29] The *Nomokanon* is proposed, not as a theoretical treatise, but as a practical approach to practical

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[24] J. Assfalg and Paul Krüger, *Petit Dictionnaire de l'Orient Chrétien*, 78.

[25] There is a Syriac edition with a French translation by Mgr Paul Bedjan, *Le Livre des Directions ou Nomokanon de Bar Hebraeus* (Paris 1898). See also A. Vööbus, *Syrische Kanonessammlungen, I: Westsyrische Originalurkunden*, I/B, *Corpus Scriptorum Christianorum Orientalium* 317 (Louvain 1970), 499–552. W. Selb, *Orientalisch Kirchenrecht II. Die Geschichte des Kirchenrechts der Westsyrer* (1989), 154–157. A not always exact Latin translation was made by J. A. Assemani (1710–1782). This was published by Cardinal Mai, *Ecclesiae Antiochenae Syrorum Nomokanon a Gregorio Abulpharagio Bar Hebraeo compositus et a Iosepho Aloysio Assemano in Latinam linguam conversus*, in *Scriptorum Veterum Nova Collectio*, vol. X, Part II (Rome 1838), 3–268.

[26] The Eastern Province – 'the Orient' – in this context indicates the Jacobite dioceses in the former Sassanid Persian Empire before the Arab conquest; it included Babylon, a large part of Mesopotamia, Nisidis, Great Armenia and Persia.

[27] See C. A. Nallino, 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo,' 228.

[28] A distinction should be made between Arab and non-Arab Christians at the time of the Muslim conquests. The Arabs had to convert to Islam, though in certain cases they were permitted to remain Christians, provided they paid a tax that was double that of the non-Arab Christians. This policy had caused mass conversions of the Arabs. See J. M. Fiey, 'L'Expansion de l'Église de Perse', *La Tradition Syriaque*, 151.

[29] Professor Nallino maintains that one should not exaggerate this freedom enjoyed by Christians under Islam. In fact, the imam was in charge of most penal and procedural matters. For this reason, Nallino thinks that the *Nomokanon* of Bar Hebraeus is a literary work and more theoretical than practical. See C. A. Nallino, 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo,' 276–277.

problems. Hence its title, *The Book of Directives,* and its brevity. It is quite a short compact volume, compared to the *Concordia Discordantium Canonum* of Gratian or the *Nomokanon* of the Church of Constantinople. Bar Hebraeus classifies, under general titles, the corresponding decisions of councils, of the Fathers and doctors of the Church and Christian imperial constitutions, where these had been translated into Syriac or Arabic.

According to Nallino, the *Nomokanon* of Bar Hebreaus is an isolated product in the Syrian Orthodox Church – it had no predecessors and it had no successors. The Syrian Orthodox Church only had the *Syro-Roman Lawbook,* translated from the Greek.[30] Bar Hebraeus has a very large section on patrimony, on judicial and on penal law – almost two thirds of his collection is concerned with this – whereas only one third deals with church law, that is, the first eight chapters out of a total of forty. For what is directly church law, Bar Hebraeus uses patristic and conciliar sources. For civil law, his source is almost entirely Islamic law-books. In fact, strange as it may seem in the writings of a Christian bishop, he reproduces in Syriac a large part of an Arabic Muslim treatise on law, composed by the famous al-Ghazali from Baghdad.[31] In the preface to the *Nomokanon,* Bar Hebraeus tells the reader that he will often reproduce anonymous texts, codifying what had become accepted custom. Nallino has shown that most of these 'anonymous' texts are taken straight from al-Ghazali. Bar Hebraeus obviously decided that, for matters of civil law and procedure, it was sufficient to adjust the Muslim collection here and there and to put a Christian spin on laws and institutes that were typically Muslim. This would seem to make it clear that the Jacobite Church did not, at that time, have a developed or advanced judicial procedure of its own. It also shows that, at this time, there was no question of the Syrian Orthodox Church having its own national and traditional Christian civil law, as a number of authors had once sup-

[30] The *Syro-Roman Lawbook* was a fifth-century compilation of legal texts based on Roman law and dealing with problems of family law, slave ownership and succession. It was popular in the East and is known in Greek, Arabic and Armenian versions. As we shall see when discussing Ebedjesus, this collection of Roman law was also included in the East Syrian *Synodicon orientale.* See A. Kazhdan, ODB, vol. 3, 2001. Also Arthur Vööbus, *The Syro-Roman Lawbook. I: The Syriac Text with an Introduction* (Stockholm 1982); *The Syro-Roman Lawbook II,* with English translation (Stockholm 1983). W. Selb, *Zur Bedeutung des syrish-römischen Rechtsbuches* (Munich 1964); H. Kaüfhold, 'Römisch-Byzantinisches Recht in den Kirchen Syrischer Tradition', R. Coppola (editor), *Proceedings of the International Congress: The Meeting of Eastern and Western Canons* (Bari 1994), vol. 1, 133–164.

[31] Al-Ghazali (1058–1111) was a teacher at Baghdad and one of the most original of medieval Islamic thinkers. Both as a scholar and a mystic, he had great influence on the religious life of Islam. Bar Hebraeus was influenced by al-Ghazali, not only in his canonical writing, but also in his writing on mysticism. It has been shown that he made extensive use of al-Ghazali's *Ihya* in the the composition of his mystical writings, the *Ethikon* and *Book of the Dove.* See Brian E. Colless, 'The Mysticism of Bar Hebraeus', *Orientalia Christiana Periodica,* 54 (1988), 153–173.

posed.[32] The Jacobite bishops were allowed very little competence in penal and procedural law, which was largely the exclusive competence of Muslim authorities. When Bar Hebraeus refers to the *higumen* in this part of his collection, he is translating the Arab term *Imam* (sovereign or governor) in the Muslim sources he is following. By far the longest part of the *Nomokanon*, that is, the whole section dealing with patrimony, penal law and procedural law, is, in the words of Professor Nallino, 'a simple imitation of a treatise by the Muslim, al-Ghazali, and does not in any way present a national Syriac law'.[33] It is Bar Hebraeus's lengthy treatment of family law, of patrimonial law, penal law and procedural law that distinguishes his Syriac *Nomokanon* from all other juridical writing, in Syriac or Arabic, by Christians of the East. In the first part of the *Nomokanon* – that is, the strictly canonical part – Bar Hebraeus provides not only a collection of laws, but also a number of directives about the interpretation and the application of the laws. So he frequently adds a directive after he has cited the canon.

It was Bar Hebraeus's intention in compiling his canonical collection to be faithful to the ancient Christian and apostolic traditions. He uses as a source the *Didascalia Apostolorum* and quotes twenty-seven canons from the Council of Chalcedon, even although this council was not formally recognized by his Church.[34] In fact, many of the conciliar canons and patristic texts he included in his Syriac *Nomokanon* were to be found in the Greek and Latin canonical collections we have been examining. From this it is clear that Syriac canon law is rooted in the traditional canons that were common to all the Christian Churches in the early centuries. He tells us in his preface what his sources were:

> The whole body of ecclesiastical canons and secular judgments I have arranged in forty short chapters, adding appropriate directives. These I have prudently prepared for the service of the Church of God and for the sons of the ministry. Concerning ecclesiastical law I have followed the apostolic canons that have been handed down in the eight books of Clement and the Didaskalia of Adda; for secular law I have agreed with the Greek emperors and others who have in any way cultivated justice. For each canon I have added the name of its source. Finally, with regard to those canons which are used frequently but which are anonymous, I have simply written 'directive'.[35] And just as I have received the canons from the holy Fathers,

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[32] For example, E. Caruso, who thought it unlikely that Christian writers would borrow freely from Muslim authors. E. Caruso, *Il problema scientifico del diritto musulmano* (Rome 1918), 106.

[33] 'una semplice imitazione di un trattato del Musulmano al-Ghazzali, e non rappresenta affatto un diritto nazionale siriaco,' C. A. Nallino, 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo', 215.

[34] De Clercq, DDC, vol. I, col. 205.

[35] As C. A. Nallino has shown, Bar Hebraeus means by the expression *directio* a regulation that he had taken from Muslim sources, and in particular from al-Ghazali. He also drew many passages from al-Ghazali for his *Ethikon* and his *Book of the Dove*, without acknowledging his

> so also have I handed on acceptable rulings from some who are not in union with us, I mean the Arians, who promulgated the twenty-five canons at Antioch, the Macedonians, who issued twenty canons at Gangra and the followers of Leo who decided on the twenty-seven canons at Chalcedon.[36]

The following authorities are quoted in the *Nomokanon*:[37] The *Doctrine of Addai*;[38] the *Canones Apostolorum*; canons from the following councils: Laodicea, Antioch, Nicaea, Chalcedon (without canon 28), Neocaesarea, Gangra, Ancyra.[39] He has canons from St Basil the Great and Severus of Antioch. Canons from the following Syrian Orthodox patriarchs of Antioch:

Cyriacus I (793–817),
Dionysius I (818–845),
Ignatius I (878–883),
Theodosius I (887–896),
John X (1064–1073),
Michael I the Syrian (1166–1199).

He has canons also from the following Syrian Orthodox bishops:

Jacob of Edessa (640–708),
John of Tella (Johannes Bar Cursus) (d. 538),
Rabbula of Edessa (d. 435),
George, 'Bishop of the Arab tribes' (640–724),[40]
Cyriacus of Amida (c. 600),
Philoxenus of Mabbugh (440–523), one of the leading thinkers, along with his contemporary, Patriarch Severus of Antioch (465–538), of the nascent Syrian Orthodox Church.

The *Syro-Roman Lawbook* is also referred to here as a source for Bar Hebraeus. The Muslim sources Bar Hebraeus used are not named explicitly; but, as has

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Muslim sources. C. A. Nallino, 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo', 229–230.

[36] By this term he means the Latins in Rome, followers of Pope Leo I.

[37] C. De Clercq, DDC, vol. 1, 205. De Clercq has listed these sources according to the number of times they have been cited by Bar Hebraeus.

[38] There are two different works with the title *Doctrina Addai*. One is a fifth or sixth-century Syriac account of the conversion of Edessa. See the edition and translation by G. Phillips, *The Doctrine of Addai, the Apostle* (London 1876); more recently, G. Howard, *Teaching of Addai* (California 1981). The other is a small collection of canons, which is probably what Bar Hebraeus is using. See A. Vööbus, *The Synodicon in the West Syrian Tradition, I* (Louvain 1975), 187–197.

[39] The West Syrian Jacobite Church did have collections of conciliar canons, from Nicaea to Chalcedon, translated from the Greek. See A. Vööbus, ibid.

[40] He was bishop of the Arabian nomads in Mesopotamia from 686.

already been noted, when he puts the heading *directio* before a particular law, this indicates that he has copied it from Muslim law-books, and usually from al-Ghazali.

The *Nomokanon* is divided into forty chapters, and sub-divided systematically into sections: the administration of churches, the sacraments, fasts and feasts; then wills and inheritance (chapters IX and X), buying and selling,servitudes and guardianship, the cultivation of the land, the liberation of slaves, the more serious crimes. Chapter XXXIV deals with crimes that merit the death penalty, and among these are apostasy and fornication. On this point there are allusions to the *Apostolic Canons*, the ancient councils and to the 'canons' of St Basil. Canonical procedure is indicated but Bar Hebraeus insists mostly on the civil penalties. The *Nomokanon* dedicates chapters XXXVIII to XL to judicial procedure.

The first eight chapters deal specifically with canon law: 1. The administration of churches; 2. Baptism; 3. Confirmation; 4. The Eucharist; 5. Fasts, feasts and prayers (he tries to introduce some system and order here); 6. The burial of the dead; 7. The priesthood. In these chapters the authorities cited are conciliar canons (Greek and Syrian). The eighth chapter on marriage only reproduces five authorities, but in the course of his treatment he cites more than once: Holy Scripture, the Fathers, the ancient councils, and even civil laws. Muslim influence is quite pronounced in this section, as one would expect. Bar Hebraeus distinguishes very clearly between betrothal and marriage (section II). He discusses matrimonial impediments. He provides careful studies of each case that could present itself, and gives a detailed account of the reasons that would justify separation and divorce. It is his lengthy treatment of family law, of patrimonial law, penal law and procedural law that distinguishes this Syriac *Nomokanon* from all other juridical writing, in Syriac or in Arabic, by Christians of the East.

Bar Hebraeus and Church Government

It is clear from the *Nomokanon* that the Syrian Orthodox Church in the time of Bar Hebraeus was divided into two provinces, the Antiochene, or Western province, and the Eastern province. The Antiochene was governed directly by the patriarch in Antioch and comprised Syria, Palestine and part of Mesopotamia. The Eastern Province included Babylon, a large part of Mesopotamia, Nisibia, Great Armenia and Persia. Both provinces came under the authority of the patriarch in Antioch, but in actual fact, the Eastern province, under the direct leadership of the maphrian, its primate, enjoyed a high degree of independence. Bar Hebraeus refers to liturgical customs concerning fasting, marriage

rituals and other matters, which were different in the two provinces. So a certain diversity was acceptable within the Syrian Orthodox Church.

He begins his discussion on church government[41] by referring to a canon from the First Council of Nicaea, noting a certain primacy of the see of Rome:

> There are four patriarchates as there are four corners of the world. The great head of all is the patriarch at Rome and, with him, he who is at Alexandria, and with him he who is at Constantinople (where the patriarchate was transferred from Ephesus) and which is called the New Rome; and with him he who is at Antioch, who is the patriarch of the whole of the East.[42]

He goes on to add that Jerusalem received the honour of being the fifth patriarchate. Concerning the Eastern province, he adds: 'and to the great metropolitan of the East authority has been given from now and henceforth to promote metropolitans, just like a patriarch, and to be proclaimed catholicos.'[43] He includes many canons on the rights and duties of bishops and from these it is clear that in the Syriac Church it was the accepted tradition that the duty of each bishop was to govern his own diocese and not to meddle in the affairs of other dioceses.[44] He quotes canon 17 of the Council of Ancyra and canon 18 of the Council of Antioch, which imply that a bishop could not be imposed on a diocese whose people did not want him; and if there were to arise any problem about this, then 'let him await the decision of the synod'.[45]

Bar Hebraeus was very conscious of the authority ascribed by law to the maphrian, and he quotes the following regulations from an episcopal synod held in Caphartata, in Mesopotamia, in 1180:

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[41] Chapter VII. *On priestly orders:* 1. On the provinces. 2. On synods and judicial procedures. 3. The ordination of bishops. 4. The power of priests. 5. The ordination of priests. 6. On deacons. 7. On deaconnesses. 8. On subdeacons, lectors, cantors and exorcists. 9. On the canon of Holy Scripture. 10. On communities of monks.

[42] Chapter VII, section 1, Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon,* 39.

[43] 'Et metropolitae magno Orientis data fuit potestas ex nunc, et deinceps, ut metropolitas, tamquam patriarcha, promoveat in Oriente, et catholicus proclamaretur', Assemani, ibid, 39.

[44] He cites *Canones Apostolorum,* canons 14, 34; Antioch, canons 13, 16,17 and 18. It should be noted that in general he gives his own versions of the Greek canons; he does not quote them verbatim. As we shall see, this is also what Ebedjesus does in his canonical compilations. Often too the numbering of canons by Bar Hebraeus does not tally with that of the Greek collections. However, he does give the substance of each law.

[45] Ancyra, canon 17 (canon 18 in the Greek collections): 'Episcopi, qui cum promoti fuerint, recepti a dioecesibus non sint, ad quas nominati fuere, si voluerint retinere sedem presbiterii, ubi fuerant ab antiquo, ne deiiciantur ex honore'. Antioch, canon 18: 'Et si propter recusationem populi, aut aliam causam, quae ab ipso non sit, non iverit, hic honoris sit particeps, et molestiam non afferat ecclesiae cui designatus est, et expectet iudicium synodi'. Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon,* 40.

1 The bishops of the monastery of Mar Mattai in Nineveh in Mesopotamia are to be subject to and obey the maphrian of the East.
2 The patriarch of Antioch may not enter the provinces of the maphrian with power of jurisdiction unless he is invited to do so. Nor may the maphrian enter the province of the patriarch of Antioch (a clear indication of the autonomy of these provinces).
3 The maphrian's place is at the right hand of the patriarch when they are together in Antioch.
4 A new patriarch may not be appointed without the consent of the maphrian.
5 A bishop who cuts himself off from the maphrian should know that by doing so he is also cut off from the patriarch.

In the second section of Chapter VII, Bar Hebraeus goes on to deal with the synodical government of the Church and he includes a number of canons on this subject from the early Greek councils. In doing so he demonstrates how his Church remained faithful to the ancient synodical traditions. This is clear from the canons he includes. He has a version of the famous canon 34 (in Bar Hebraeus, canon 31) of the *Apostolic Canons:* 'Let the bishops recognize him who is first among them and let them consider him to be the one who presides; nor let them do anything without his agreement, except in their own districts; and indeed neither should he do anything without their agreement'.[46] He includes also canon 38 of the *Apostolic Canons* which stipulates that there should be a synod of bishops twice a year to deal with doctrinal questions and to resolve disputes between ecclesiastics. The first should be held on the fourth Saturday of Pentecost, the second on 14 October.[47] He also quotes the fifth canon of the Council of Nicaea which laid down that there should be a synod twice a year in every province, one before Lent and the second in the autumn.[48] This collegial nature of church government is shown very clearly in the fourth canon of the Caphartuta synod of 1180:

> The patriarch is not to be appointed without the consent of the maphrian, if he is living; if he is not, the Easterns can appoint for themselves the maphrian... However, concerning the question about whether the

[46] On this same topic Bar Hebraeus gives his version of canon 9 of the Council of Antioch: 'Let the bishops of every province recognize the great metropolitan; nor may they do anything important without him, except for ordinations'.

[47] 'Twice a year let the synod of bishops convene concerning dogma and disputes among churchmen: on the fourth Saturday of Pentecost and the fourteenth day of October'. Bar Hebraeus also includes what he terms canon 40 of the Council of Antioch on the same point, that a synod should be held twice a year and that it should not be held without the metropolitan. Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon*, 42.

[48] 'In omni provincia bis in anno congregetur synodus et quaestiones clericorum et saecularium, qui excommunicati sunt ab episcopo, discutiantur ante festum quadragesimale, et in autumno'.

> maphrian can lay hands on the patriarch or that this should be the task of the president of the synod, let them choose two Western bishops and two Eastern bishops; the person on whom these four will agree will carry out the laying on of hands.[49]

It is clear, then, from the ancient canons he selected from the early Greek councils for his *Book of Directives*, that Bar Hebraeus expected all serious problems to be settled in episcopal synods. The patriarch is acknowledged as the highest authority in the Church, but Bar Hebraeus does not have any section which deals directly with a centralized authority of the patriarch, apart from his episcopal synod. It was clearly the view of Bar Hebraeus that the Syrian Orthodox Church, in which he was metropolitan and maphrian, was bound by the ancient tradition of collegial government, at a time when this had been almost completely abandoned in the Latin Church of the West. In this section dealing with church government, he includes a long passage from Bishop Philoxenus of Mabbug in praise of all church administrators who favour peace and reconciliation, and he cites the example of St Paul and of certain Fathers of the Church, including Severus of Antioch, who ' to have peace in the Church forbade the reordination of bishops, priests or deacons who returned from the heresy of the Dyophysites'.[50]

A Married Clergy

The duties of the clergy form the subject matter of Chapter VII, section V.[51] Bar Hebraeus does not deal specifically with the marriage of the clergy. He simply includes a number of earlier conciliar canons which presuppose that there would be clergy who were married. For example, *Apostolic Canons*, canon 5: 'A cleric must not put away his wife on account of observing chastity; otherwise let him be deposed, because he has dishonoured a legitimate marriage'.[52] Also, canon 17 of the *Apostolic Canons:* 'He who has been married twice after bap-

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[49] 'Ne promoveatur Patriarcha sine consensu Maphriani, si vivus sit: alias possunt orientales promovere ipsi sibi Maphrianum... Propter illam autem quaestionem, utrum Maphrianus ponat manum supra Patriarcham, an praeses synodi, eligant occidentales duos episcopos, et duos orientales, et ille cui consenserint hi quattuor, ipse imponat manum'. Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon*, 41.

[50] 'Sanctus etiam Severus propter pacem in Ecclesia vetuit ne episcopi et presbyteri ac diaconi qui redeunt ab haeresi Dyophysitarum iterum ordinarentur, aut baptizarentur: sed postquam anathematizassent haeresim illam, ex qua redierant, et implessent tempus paenitentiae suae, starent in suis ordinibus, et in suis gradibus ministrarent', Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon* 43. Philoxenus is referring to the teaching of Chalcedon as 'the heresy of the Dyophysites'.

[51] Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon,* 47ff.

[52] Chapter VII, section v, Assemani, ibid, 47.

tism, or who has had a concubine, cannot become a priest or a deacon'.[53] Moreover, the tradition was accepted that a priest or deacon, after ordination, was not permitted to marry, or to re-marry if he had already been married, as was laid down in the first canon of the Council of Neocaesarea: 'A priest or deacon, who marries a wife, is to be deposed'.[54] However, Bar Hebraeus, quoting from Patriarch Ignatius, allows deacons, whose wives have died before they had consummated the marriage to marry again and to function as deacons. They may also become priests.[55] From this it is clear that the discipline of the Syrian Orthodox Church concerning the marriage of the clergy was the same as that which we have already seen in treating the Church of Constantinople. From the canons quoted it is clear that this discipline was already in place before the christological divisions of the fifth century.

On Marriage

The same can be said about the discipline of the Syrian Orthodox Church with regard to divorce and re-marriage. It is very similar to that of the Church of Constantinople. In Bar Hebraeus's treatment of matrimonial law there are many signs of Muslim influence, which is not surprising since they lived in a Muslim environment. For example, a curator, or male representative for the girl, had to be appointed for the engagement ceremony. This was a logical sequel to the way women were treated under Islamic law. Also regulations concerning the dowry show the influence of Islamic customs.[56] However, it is not part of my purpose to deal with these aspects of marriage. I am concerned at this point only with the law of the Syrian Orthodox Church with regard to allowing marriage after divorce. Bar Hebraeus deals with this in Chapter VIII, Section V: *On Separation.* He begins the discussion by repeating the Church's teaching that marriage is, in principle, indissoluble. This follows from what the Lord himself had commanded: 'What God has joined together, let no man put asunder'.

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[53] Bar Hebraeus numbers this canon 16. It is interesting to note that the original canon had 'cannot be a bishop, priest or deacon', and Bar Hebraeus omits the reference to becoming a bishop. By the time of Bar Hebraeus it seems to have been established that bishops had to live in complete continence. See J. Dauvillier and C. de Clercq, *Le mariage en droit canonique oriental* (Paris 1936), 103.

[54] This a paraphrase of the original conciliar canon: 'Presbyter, si uxorem duxerit, ordine suo moveatur; si autem fornicatus fuerit vel adulterium commiserit penitus extrudetur et ad paenitentiam deducatur'. PG, vol. 137, col. 1195.

[55] In Assemani's Latin translation: 'Diaconi, quorum sponsae in vivis esse desinunt, antequam cum iis copulam habuerint, aut osculum eisdem fixerint, uxores ducant, et diaconatu fungantur, ac presbyteri etiam fiant'. See Dauvillier and de Clercq, *Le mariage en droit canonique oriental*, 176.

[56] See Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon*, 72.

Therefore, divorce should only be permitted for serious reasons: 'legal' or 'natural'.[57]

He lists the legal reasons: adultery by the woman, witchcraft, affinity, entering a monastery, slavery, bodily defects which cause impotence, and dishonourable conduct. The teaching of Bar Hebraeus is along the same lines we have already seen in the Greek sources for the Church of Constantinople. Marriage should be regarded as indissoluble, but when serious reasons exist, a divorce may be permitted and the innocent party is free to re-marry. Bar Hebraeus includes a number of other reasons for divorce, taken from Roman Law. If the wife stays away from home without the permission of her husband; if she goes to the theatre to see indecent shows; if the husband is guilty of beating his wife – with a rod or a shoe or a whip; if the husband brings home a harlot or a lover; if he goes in for magic; if he is an adulterer.

To sum up, the *Nomokanon* of Bar Hebraeus gives a clear picture of the organizational structure of the Jacobite Church in the thirteenth century. This is a synodical structure firmly based on the conciliar canons of the early centuries and the apostolic traditions that had been handed down. It differs substantially from the Church of Rome in that there does not seem to have been a highly centralized exercise of patriarchal authority. The bishops are responsible for their dioceses but are expected to work together on a regular basis in council for the common good. The Syrian Orthodox Church also differs from Constantinople in that there was no imperial involvement in church government. Bar Hebraeus displays how a Christian bishop could live and work under Muslim rule and in a Muslim environment. He himself was highly respected by the Muslim authorities and was not opposed to making use of Muslim writings for the good of the Church. He was also ecumenical in his approach and lived on good terms with his fellow-Christians of the East Syrian Church of the East. On the question of re-marriage after divorce and marriage of the clergy, it is clear that the Jacobite Church did not differ from the Church of Constantinople.

The East Syrian Church of the East

Not many Western canonists are familiar with the history and activity of this Church, since what is known as the 'Early Church' has often been identified with the Christian communities within the confines of the Roman Empire and

[57] Chapter VIII, Section V: *De Separatione:* 'Ius coniunctionis ipse Deus principio confirmavit... Relinquet namque homo patrem suum, et matrem suam, et adhaerebit uxori suae. Et sapiens Solomon in proverbiis suis ostendit, quod a Domino desponsatur mulier viro. Et Dominus noster praecepit: id quod Deus coniunxit, homo non separet. Separatio ergo communicationis comprobatae, ut est ista, non iocose fit, sed per causas has, aut naturales aut legales'. Assemani, *Ecclesiae Antiochenae Syrorum Nomokanon,* 73–74.

those in the West. Yet from the fourth century onwards there were flourishing Christian communities in the East outside the Roman Empire, with their own traditions, their own martyrs and their own organization. As we have just seen, the Jacobite Church of the East produced a distinguished canonist in Bar Hebraeus. I now want to describe briefly the other large Christian community of the East that developed quite independently from the Jacobite Church. It is known as 'the Church of the East' or the 'East Syrian Church', which developed first in what was known as the Parthian Empire and when that empire was overthrown by the Persians in the third century, continued to grow under the Persian government.[58] Its first communities were in northern Mesopotamia and it was the language of that region, Syriac or Aramaic, which has remained the language of this Church. It was this Church which, at the Synod of the Catholicos Yaballaha I in 424, even before the Council of Ephesus, declared the independence of the see of Seleucia-Ctesiphon, the capital of the Persian empire, with regard to the authority of the 'Western bishops' within the Roman Empire. This was more of a political than a religious decision, and was taken to ensure their survival within the Sassanid Empire, which was frequently at war with the Roman Empire,where Christianity had been declared the state religion. Their close association with the established Church of the Roman Empire had already brought persecution from the Persian government.[59] In 363 the city of Nisibis was ceded to the Sassanids by the Roman Empire and it very soon became an important see of the Church of the East. The Creed and canons of the First Council of Nicaea were formally accepted at the Synod of Seleucia-Ctesiphon in 410. These Christians found themselves in sympathy with the christological formulations that had been put forward by Theodore of Mopsuestia, and by the views of Nestorius, many of whose adherents had fled persecution in the Byzantine empire to neighbouring Persia, but the Church of the East never adopted formally 'Nestorianism'.[60] Christianity had been firmly established in the west-

[58] An important source for our knowledge of this Church is the collection of canons of the synods held by it between 410 and 775. This is known as the *Synodicon orientale*. It has been edited with a French translation by Jean-Baptiste Chabot, *Synodicon orientale ou Recueil de Synodes Nestoriens*, (Paris 1902); Syriac text: 17–252; French translation: 253–524. This collection of the East Syrian canons was probably made in the early years of the patriarchate of Timothy I (780–823). It contains the canons of thirteen synods. It would have been known and used by Ebedjesus. See also Walter Selb, *Orientalisches Kirchenrecht, I. Die Geschichte des Kirchenrechts der Nestorianer* (Vienna 1981), 97–115. A. Thazhath, *The Juridical Sources of the Syro-Malabar Church* (Kottayam 1987), 82–90. On the early history of this Church, see also a recent article by Sebastian Brock, 'L'Église de l'Orient dans l'Empire sassanide jusqu'au VIe siècle et son absence aux conciles de l'Empire romain', *La Tradition Syriaque* (Paris 1995), 25–43.

[59] See I. Ortiz de Urbina, 'Storia e cause dello schismo della Chiesa di Persia', *Orientalia Christiana Periodica*, III (1937), 456–485.

[60] A number of modern writers continue to call them Nestorians, but, as has already been noted in Chapter One, this has no foundation. See Sebastian Brock, 'The *Nestorian Church*: a lamentable misnomer', *Bulletin of the John Rylands Library* 78 (1996), 22–35. In *The Book of thePearl*, when

ern provinces of the Persian Empire, particularly among the mainly Syrian population of northern Mesopotamia and in Khuzistan and Fars. The members of this Church were able to establish a workable relationship with the Muslims when the Muslims conquered Syria and Persia in the seventh century. They were not allowed to convert Muslims, but their missionaries were otherwise allowed extensive freedom. Between the ninth and the fourteenth centuries they formed what was probably the most extended Christian Church in the world, with dioceses stretching from the Mediterranean right across Asia to China. This is the Church of the apostolic tradition of St Thomas the Apostle and his disciples Addai and Mari, which, at the outset of the Christian era, evangelized not only South India but also, in the seventh century, reached as far as north west China. The Si-ngan-Fu Stone (Hsi-an fu stele), so-called because found in that city, the capital of the Celestial Empire, was set up in 781 to commemorate the arrival of Christians from this Church in China 150 years earlier, in 635. This large stone slab is inscribed with a long decree, mainly in Chinese, but with Syriac additions, which commemorates the diffusion within the Chinese Empire, by means of religion, of the light that comes from Persia or Tach'in.[61]

The dialogue between their catholicos, Timothy I (780–823), towards the end of the eighth century, and the caliph, al-Mahdi, is one of the most frank and courageous ever to take place between Christians and Muslims.[62] Patriarch Timothy I was highly regarded by the caliphs al-Mahdi and Harun al-Rashid (785–809) who allowed him to carry out a remarkable missionary enterprise in India, Turkestan and beyond. This approach permitted the Church of the East to prosper under Islam, to such an extent that by the beginning of the fourteenth century, in the Middle East and in the Far East, including Mongolia and Tibet, it numbered about 230 eparchies and 27 metropolitan sees, under the leadership of a patriarch, the catholicos of the East, in Seleucia-Ctesiphon, near Baghdad,

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discussing the divisions among Christians, Ebedjesus objects to his own Church being called 'Nestorian'. The East Syrians, he writes, in no way changed their faith to receive that of Nestorius, 'who was never their patriarch nor did they even know his language'. But on hearing how Nestorius propounded his teach about Christ, true God and true man, the East Syrians recognized this way of speaking to be in harmony what they had always believed. This was the reason why the East Syrian Church welcomed Nestorius among them when he was expelled from Constantinople. See *The Book of the Pearl*, III, 4, in A. Mai, *Scriptorum veterum nova collectio, X*, (Rome 1838), 329. See J. Parisot, *Abdiésu ou Ebedjésu*, in *Dictionnaire de Théologie Catholique*, vol. 1, col. 26.

[61] See P. Y. Saeki, *The Nestorian Monuments in China* (Tokyo 1937). P. Pelliot, *Recherches sur les chrétiens d'Asie Centrale et d'Extreme-Orient*, II, 2, *La stele de Si-ngan-fu.* (edited by J. Dauvillier and A. Guillaumont) (Paris 1984). There is a replica of this stone in the Metropolitan Museum of Art, New York. An English translation of this important decree can be found in C. J. Barry (editor), *Readings in Church History*, revised edition (Collegeville 1985), 300–307. See also Dennis Hickley, *The First Christians in China* (London 1980), 19–21.

[62] Hans Putman, *L'Église et l'Islam sous Timothée I. Édition du dialogue entre Timothée et le calif al-Mahdi* (Beyrouth 1975).

the new capital city.[63] Indeed, during the Mongol period this Church was governed by Yaballaha III (1283–1318), a Mongol who had been born in China. He sent a legate, Rabban Sawma, also a Mongol from China, to meet the bishop of Rome and the kings of Europe to propose an alliance with Mongolia in order to regain possession of Jerusalem. Travelling by way of Constantinople, Rabban Sawma arrived in Italy during a long papal interregnum (April 3 1287 until February 15 1288). While awaiting the cardinals' decision on the election of the pope, the legate from the 'Church of the East' continued his travels and visited the courts of France and of England. On his return journey he did manage to meet the new Pope, Nicholas IV. The account of his travels, written originally in Persian but extant only in Syriac, has been translated into English by E.A. Wallis Budge[64] and, in part, by James A. Montgomery.[65] In the following century the 'Church of the East' was the leader in the so-called Syriac renaissance through the outstanding Christian thinker, theologian and canonist, Ebedjesus. This Church has tended to be forgotten today because in the late fourteenth and early fifteenth centuries it was almost annihilated by the notorious conqueror and devastator, Timur Lang.[66] It was for this flourishing Church that Ebedjesus compiled his canonical collections towards the end of the thirteenth century and the beginning of the fourteenth.

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[63] Jean Dauvillier, 'Les provinces chaldéennes de l'extérieur au Moyen-Age', *Mélanges F. Cavallera* (Toulouse 1948), 260–316. J. M. Fiey, 'L'expansion de l'Église de Perse', *La Tradition Syriaque*, 149–157. J. Stewart, *Nestorian Missionary Enterprise: History of a Church on Fire* (Edinburgh 1928), xxvi.

[64] E. A. Wallis Budge, *The Monks of Kublai Khan Emperor of China or the History of the Life and Travels of Rabban Sawma Envoy and Plenipotentiary of the Mongol Khans to the Kings of Europe, and Markos who as Mar Yaballaha III became patriarch of the Nestorian Church of Asia* (London 1928). There is a good general book on Rabban Sauma by M. Rossabi, *Voyager from Xanadu: Rabban Maura and the First Journey from China to the West* (Tokyo – New York – London), 1992.

[65] James A. Montgomery, *The History of Yaballaha III, Nestorian Patriarch and his Vicar Bar Sauma* (New York 1927). On Palm Sunday, 1288, Rabban Sawma received communion from the newly-elected Pope Nicholaus IV, who, according to the diary of Rabban Sawma, sent a letter to Yaballaha, confirming his patriarchal authority over the Church of the East; he also sent him a tiara and a ring. J. A. Montgomery, *The History of Yaballaha III*, 69–72. Not all the members of his Church shared Yaballaha's ecumenical tendencies and, under his successor, Timothy II, there was something of a reaction against the attempts to reunite with Rome. See J. Dauvillier, 'Chaldéen (Droit)', in DDC, vol. III, col. 361.

[66] Timur Lang, also known as Tamerlane (1336–1405), from Transoxania was of Turkish stock, not Mongol. In a series of military campaigns he sacked and destroyed many of the cities in Asia and Persia. He massacred the Christian populations of Syria, Mesopotamia, Anatolia and Georgia. Between 1360 and 1405 he almost annihilated the Assyrian Church and the Jacobite Church that had flourished under the Mongols. In 1401 he plundered and burned Damascus. He is said to have left in his trail ruined cities and pyramids of human heads. He made of his capital, Samarkand, in Transoxania, the most splendid city in Asia. See V. V. Bartold, *Four Studies in the History of Central Asia*, 2 vols, (Leiden 1956–58). Hilda Hookham, *Tamburlane, the Conqueror* (London 1962).

The Life and Work of Ebedjesus

We have little information about the life of the most famous canonist of the Church of the East. His name was, in Syriac, 'Abhdîšô'bar Bêrîkhâ, that is, servant of Jesus, son of Benedict, but he is known generally in the West as Ebedjesus. We do not know where or exactly when he was born. We know from his own writings that he was a monk. In 1284–85, he was bishop of the combined episcopal sees of Šighar and Beth 'Arbaye, a mountainous region to the west of Mosul (in what is now northern Iraq), where there were a number of East Syrian monasteries. In 1291 he was transferred to the metropolitan see of Nisibis, in Persia,[67] a position he held for almost thirty years. Ebedjesus was one of the most learned bishops of the East Syrian Church in the last great splendour of that Church before the dispersal and persecutions of the late fourteenth century. He was for the East Syrian Church what Bar Hebraeus was for the Jacobites. Like Bar Hebraeus, he wrote on theology, liturgy, history, Syriac literature and science as well as canon law and jurisprudence.[68] He has been described as 'the greatest writer among East Syrians in the second millennium'.[69] His huge literary output included two important canonical works: *A Collection of the Synodical Canons,* (often referred to as the *Nomokanon* of 'Abhdîšô), and *The Regulation of Ecclesiastical Judgments and Laws.* Concerning the *Collection of Synodical Canons,*[70] Ebedjesus states in his preface that the authorities of his Church had asked him to undertake the work. This must have been Patriarch Denkha or his successor, Yaballaha III. We now know that he wrote this while he was a monk and before he became a bishop; and so it would have been compiled before 1284.[71] Neither the Jacobite Church nor the Coptic Church had

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[67] Nusaybin in modern Turkey, on the border between southeast Turkey and northeast Syria. It had been an outpost of the Roman Empire but in 363 it was ceded to Persia as part of a peace treaty.

[68] He published commentaries on the Old and New Testaments, treatises on theology, and a treatise on Greek philosophy. *The Book of the Pearl on the Truth of the Christian Religion* provides an important example of the theology of his Church in his time (A Latin translation of this has been published by A. Mai in *Scriptorum Veterum nova collectio,* vol. X, 317–366). He has left us a list of his own writings, published in *Bibliotheca Orientalis,* vol. III, 325ff. See also W. Wright, *A Short History of Syriac Literature,* 285ff. Anton Baumstark, *Geschichte der syrischen Literatur* (Bonn 1922), 323ff.

[69] Arthur Vööbus (editor), *The Canons Ascribed to Maruta of Maipherqat and related sources. Corpus Scriptorum Christianorum Orientalium* (Louvain 1982), xv.

[70] The Syriac text has been edited by Angelo Mai, with a Latin translation by Joseph-Aloys Assemani: *Ebediesu Metropolitae Sobae et Armeniae Collectio Synodicorum Canonum ex Chaldaicis Bibliotechae Vaticanae codicibus sumpta et in Latinam linguam translata ab Aloysio Assemano,* in *Scriptorum veterum nova collectio, X* (Rome 1838): text: 169–360; Latin translation: 3–168. The earliest extant manuscript of this work of 1301, written when Ebedjesus was still alive, is in Trichur in Kerala. Another early manuscript is *Ms. Vatican Syr. 129.* This was completed in 1332, only fourteen years after the death of Ebedjesus.

[71] See A. Vosté, *The Canons Ascribed to Maruta of Maipherqat and related sources,* 24.

a comprehensive collection of church law until the *Nomokanon* of Bar Hebraeus (c. 1260) and that of Ibn al-'Assal (c. 1250). This was not the case with the East Syrian Church. This Church had produced a vast literature on church law going back to the fifth century. We are given some idea of how extensive this was, if we look at the catalogue that Ebedjesus gives us of the books he had in his own library.[72] But there were no systematic collections of canon law. Ebedjesus set out to remedy this state of affairs by producing what was the first ordered, thematic collection of canon law his Church had ever had, doing for the East Syrian Church what Bar Hebraeus had done for the Jacobites some forty years previously. Ebedjesus sets out to be brief but comprehensive. His aim was to be of assistance to pastors in resolving problems. So it was meant to be a practical manual. He makes no claim to be providing a new or original work, but simply a collection of the then existing canons and customs that were in force in his Church. He omitted from his collections all those canons that he considered useless, repetitious or out of date, and the texts he did select he often modified or interpreted in accordance with what he thought was appropriate. In general, Ebedjesus does not provide lists of canons exactly transcribed from his sources, as, for example, Gratian and Balsamon did. Since his aim was to make a compilation of what he judged to be the most important *current* legislation for his time and place, he selected canons and summarized others as he thought fit, keeping always to the substance of the laws he is quoting. It is a problem-oriented collection, and in this it resembles the *Concordia discordantium canonum* of Gratian, though it is a much smaller and more compact volume than the *Concordia.* Each text is preceded by a heading, stating where it comes from, though these headings are often imprecise.

At the beginning of the *Collection of Synodical Canons*, Ebedjesus sets out the three collections of Pseudo-Apostolic canons that were accepted by his Church. The oldest document is a collection of twenty canons, purporting to have been handed down by the Apostles and transmitted by Pope Clement.[73] He then gives the twenty-seven *Canons of the Apostles.*[74] Finally, in this introduc-

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[72] This was published by J.-S. Assemani, in *Bibliotheca Orientalis,* vol. III, Part I, *De scriptoribus nestorianis* (Roma 1725). For a comprehensive and fully documented account of the development of the law within the East Syrian Church from the early centuries to modern times, see the long discussion in J. Dauvillier, 'Chaldéen (Droit)', in DDC, vol. III, cols 292–388, in which a full account of the East Syrian synods from 410 until 775 is given.

[73] He would have found these in the *Synodicon Orientale.* They probably date from the third century, and deal mainly with the life and liturgical ministry of bishops, priests, deacons and deaconesses. See J.-B. Chabot, *Synodicon orientale,* 14ff.

[74] Concerning these twenty-seven canons of the Apostles, see A. Vööbus, *The Didascalia Apostolorum in Syriac.* These canons deal mainly with the liturgical duties of the Christian ministers. Canon 17 is an interesting stipulation of collegiality in the early Church: 'Constituerunt etiam Apostoli, quod non possit rector sine illis, qui ministrant cum eo, esse administrator rerum, quae ecclesiae sunt, sed cum consilio omnium praecipiatur, et agatur illud, quod est Domini nostri, et in quo omnes consentiunt, neque dissentiunt'. *Scriptorum veterum nova collectio,* X (Rome 1838), 4.

tion to his collection, he places the 83 *Canons of the Apostles.* These correspond to the the 85 *Canones Apostolorum* that we have already looked at in the *Synagoge* of John Scholastikos and which were included in the list of canonical sources in the second canon of the Council *in Trullo.*[75] Many years later, when he was compiling his second more comprehensive collection, the *Regulations of Ecclesiastical Judgments,* in the second chapter of the first treatise he provided a list of the canonical sources that were accepted by his Church. At the head of this list he places once again the three collections of Pseudo-Apostolic canons we have just been considering. Clearly, these canons were accepted and revered as transmitting traditions from Apostolic times.

Then he goes on to include the so-called 'western' canons, from the following synods: Ancyra, Neocaesarea, Nicaea, Gangra, Antioch, Laodicea, Constantinople and Chalcedon. All of these synodical canons, as we have seen, are included in the Roman and Byzantine canonical collections. In addition Ebedjesus includes what he calls the 73 canons of the 'Ecumenical Synod', and he tells us that these canons were translated from the Greek version into Syriac by Bishop Maruta of Maipherqat, towards the beginning of the fifth century.[76] The origin of this short collection of canons is not known. They were accepted in the East as canons of the First Council of Nicaea and were known as the 'Arabic Canons of Nicaea'.[77] In 410 Mar Isaac of Seleucia-Ctesiphon united a number of dioceses to form one province. It is not unlikely that Mar Isaac asked Maruthas of Maipherqat to draw up in Syriac a collection of canons or regulations that were in force in the Church of Antioch. This could be the origin of the collection we now call the Arabic Canons of Nicaea.[78] Vööbus thinks that the value of Ebedjesus as a source for the transmission of the texts of the canons ascribed toMaruthas isdiminished since his handling of legislative sources 'is not always strictly scholarly. In the part on the *Synodicon* he is quite arbitrary upon occasion – since he not only excerpted the canons but even modified and

[75] See the last chapter of Book VIII of the *Apostolic Constitutions.* It is interesting how these canons were accepted by most of Christendom, Greek, Syrian and Arabic, as embodying apostolic traditions.

[76] OIE, Liber II, Tract. I, 'De fontibus disciplinae ecclesiasticae,' 52, in the translation of J.-M. Vosté (Vatican 1940).

[77] See Mansi, vol. II, 947–1010, where there are two collections of Arabic Canons of Nicaea, one with 80 canons and the other with 84. Later, when it was realized that these canons had not been promulgated by the Council of Nicaea, they have been referred to as the 'Pseudo-Nicene Canons', but they have played an important part throughout the Christian East; they were accepted by the Coptic Orthodox Church, the Ethiopian Church, and the Melkite Church, as well as by the East Syrian Church in the collection of Ebedjesus.

[78] See E. Tisserant, 'Marouta de Maypherqat', in *Dictionnaire de Théologie Catholique,* vol. X, Part I, col. 148. Bishop Maruthas of Maypherqat was influential in the early years of independence of the Syrian Church of the East. He was on friendly terms with both the emperor in Constantinople and with the Persian emperor, to whom he had been sent as ambassador in 399. See E. Tisserant, 'Marouta de Maypherqat', 142–149.

changed them. The same appears also in the treatment of the canons ascribed to Maruta'.[79]

After listing these foundational canons, Ebedjesus goes on to enumerate the synodical canons that had been promulgated for his own Church in synods from that of Mar Isaac in 410 to that of Mar Timothy I in 775. It is to the canons of these Assyrian synods that we must look to discover the specifically East Syrian canon law and compare it with the developments that were taking place in Rome and in Constantinople in those centuries. Having indicated the canonical sources that Ebedjesus used to compile his collections, I will now say something about the structure and content of the collections themselves. The *Collection of Synodical Canons* is divided into two parts. Part I has five treatises, each divided into chapters, containing canons which deal with the common law for all Christians. He begins the first treatise by explaining what a synodical canon is, stressing that it is a decree enacted by a synod and not that of an individual patriarch or bishop. He then describes what he considers the foundational ecumenical council for all who want to bear the name of Christian, the Council of Nicaea in 325, and follows the version of the canons made by Maruthas of Maipherqat. He adds a profession of faith in accordance with Nicaea. The second treatise deals with marriage – to which we shall return shortly – and the third with the laws of inheritance.[80] The fourth treatise deals with civil cases between Christians, where Ebedjesus collects and classifies all the relevant laws from the East Syrian *Synodicon orientale.* Here also he includes some Roman law from the *Syro-Roman Lawbook,* which has already been mentioned. The fifth treatise deals with prayers and observances laid down for all Christians. Part II of the *Collection of Synodical Canons* deals with the Church's hierarchy. It opens with a preface by Ebedjesus, followed by an account of the proceedings of the patriarchal synod of 1318, under Patriarch Timothy II. Treatise six contains the regulations for all clerics; treatise seven those for monks, and treatise eight those for bishops, metropolitans and the synods that they are bound to hold regularly. Treatise nine deals with the authority of the patriarch, to which we will return.[81]

His second collection, *The Regulation of Ecclesiastical Judgements and Laws*[82] was composed many years after the first one, towards the end of his life,

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[79] Arthur Vööbus (editor), *The Canons Ascribed to Maruta of Maipherqat and related sources. Corpus Scriptorum Christianorum Orientalium* (Louvain 1982), xvii.

[80] This is preceded by a short history of East Syrian canon law where Ebedjesus attributes to St Ambrose of Milan the 'Syro-Roman Law-Book'.

[81] 'De iis quae spectant ad magnam patriarchatus dignitatem, deque eius sublimitate et quae honori ipsius congruunt atque debentur'.

[82] This second collection has been edited and translated into Latin by J.-M. Vosté, *Ordo Iudiciorum ecclesiasticorum, Fonti,* Serie II, fasc. XV (Vatican 1940). It disappeared from circulation for centuries, but then a sixteenth-century manuscript containing it was discovered in a monastery in northern Iraq, from which a number of copies were made. See OIE, xviii.

in the year 1315/16. Ebedjesus tells us that he made this second collection when he was metropolitan of Nisibis, to provide a much-needed compendium of procedural law for his Church. As in the first collection, there are two volumes which deal with ecclesiastical legislation in the areas of Christian virtues, ethics, cult, degrees in the ecclesiastical service and discipline; and ecclesiastical jurisdiction and laws on courts, marriage, property and inheritance laws. The first chapter of the first treatise of Part I deals with the orthodox faith, and provides an exposition of the Nicene Creed that the Catholicos Mar Aba gave in his second synodical letter (544 AD)[83] The second chapter, as we have already seen, provides a list of all the canonical sources that are accepted by the East Syrian Church. The other chapters in this first treatise contain versions of a number of the sources he has listed: the twenty-seven Apostolic Canons, the eighty-one canons of the second series of Apostolic Canons, thirteen canons from the *Didascalia Apostolorum*, and the seventy-three so-called Nicene canons. Then he gives a selection of canons from the Synod of Mar Isaac (410 AD), from the Synod of Mar Yaballaha I (420 AD), and from the Synod of Mar Aba (544 AD) The second treatise is more theological and liturgical than canonical and contains regulations on prayer, virtues, and Christian living in general. The third treatise concerns the divine office and encourages frequent attendance at the Eucharist. The fourth provides an explanation of terms that should be known by all Christians and deals with degrees and orders in the Church. The fifth treatise contains the laws that are to be observed by judges in the Church and has important directives on the need for fairness, justice and equity. Book Two opens with the sixth treatise, which deals with judicial procedure, the seventh treatise with judges, counsellors and witnesses and connected issues. The eighth treatise is a long treatise on marriage, to which I will return. The ninth treatise contains regulations on property, buying and selling, usury, and other problems that a judge may have to deal with among Christians. Ebedjesus includes here an exposition of the principles that should direct the application of all penal legislation.[84] The tenth and last treatise deals with the regulations on inheritance. He had already dealt with this in the third treatise of the *Collection of Synodical Canons,* but, according to some scholars, this is a much more satisfactory treatment of the subject.[85]

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[83] Ebedjesus begins his canonical collection with an explanation of the orthodox faith: 'Quia vero omnes christiani accipiunt fidem nicaenam eique assentiunt, aliquantulum tamen in eius explicatione dissentientes, propterea omnino necessarium mihi visum est initio horum canonum scribere symbolum fidei, id est explicationem accuratam viri famosi Mar Aba Catholici, benedictae memoriae, ex epistula synodica eius secunda de fide orthodoxa'. OEJ, 33.

[84] OEJ, 216–218.

[85] 'Par sa clarté, par la netteté des exemples proposés, par l'ordre et la systématisation qu'on y rencontre, il apparait bien supérieur au traité III de la *Collection des canons synodaux'*. J. Dauvillier, 'Ebedjésus' in 'Chaldéen (Droit),' in DDC, vol. III, col. 126.

As we have seen, Ebedjesus was careful to inform his readers of his canonical sources both in the *Collection of Synodical Canons* and in the *Regulation of Ecclesiastical Judgements.* This information about the sources he was drawing on is of importance for several reasons. Ebedjesus makes it clear that the East Syrian Church accepted the same conciliar canons that were the foundation of canon law both in Rome and in Constantinople. It shows that the same conciliar canons were the foundation of the canon law of the whole Christian Church. The selection made by Ebedjesus of the ancient *Apostolic Canons* is of particular interest, since, as A. Vööbus has observed, in his two canonical collections Ebedjesus has provided another source for the history and transmission of the canons that were attributed to the Apostles.[86] These lists of authorities also give us a clear idea about his thought on the nature of the Church and its government: the central place is given to canons promulgated in synod. It is clear that Ebedjesus considered these ancient conciliar canons to be the basis of the canon law. Secondly, the Church is seen to be a communion of Churches, in which each is responsible for its own affairs and the supreme legislative authority in each Church is the patriarchal synod which should meet regularly.[87]

In Ebedjesus the same three questions will be considered as were discussed in the *Nomokanon* of Bar Hebraeus. From an examination of his *Collection of Synodical Canons* and his *Regulations of Ecclesiastical Judgments*, what can we tell about the East Syrian Church's attitude towards Church government and administration, clerical celibacy, and the question of divorce and re-marriage?

Supreme Legislative Power in the East Syrian Church

Since the Church of Persia developed outside the boundaries of the Roman Empire, it found itself excluded from the great councils of the early Church. When Maruthas of Maipherqat, at the synod of 410, made an attempt to see that 'the laws and divine regulations, the true and orthodox canons that had been established in the West by the honourable Fathers should also be established in the Orient,' only two ecumenical councils had taken place – Nicaea I and Constantinople I.[88] The Assyrian Church of the East has never formally recognized any others, though it accepted twenty-seven of the canons of the Council of

[86] For the text of these Arabic Canons, OIE, 46ff. For a discussion of these, see OIE, xix–xx. Also A. Vööbus, *The Didascalia Apostolorum (Syriac Version),* in English and Syriac, *Corpus Scriptorum Christianorum Orientalium,* vols 401–402; 407–408 (Louvain 1979).

[87] There is also canonical information in another work of Ebedjesus: *The Book of the Pearl* (written in 1297–1298). This an important example of the official 'Nestorian' theology in the thirteenth century. It is a theological work but it does have some canonical relevance concerning sacraments. It is published in A. Mai, *Scriptorum veterum nova collectio,* vol. X, 317–366.

[88] The Council of Nicaea in 325 and the First Council of Constantinople of 381.

Chalcedon.[89] In 420, another attempt was made to use 'western' discipline in the Persian Church, and of canons from the fourth-century regional councils of Ancyra, Neocaesarea, Gangra, Antioch, and Laodicea in Phrygia. (These councils, as we have seen, are the five regional councils accepted by both Constantinople and Rome). After this there was very little contact with Constantinople.

The government of the Church of the East was, in principle, synodical. The sources that Ebedjesus lists for his treatise on the law are almost entirely canons from episcopal synods – and mainly canons from the synods held by the East Syrian Church from the year 410 onwards. As already noted, it was in 410 that the East Syrian Church declared its independence or autocephaly.[90] He also makes extensive use of a number of the councils of antiquity. From his canonical collections it is clear that supreme legislative, judicial and executive authority lay with the patriarchal synod. Legislation was the work of synods, convoked by the catholicos[91] and attended by metropolitans and bishops. This was the forum for the discussion and settlement of all important matters concerning the patriarchate and the dioceses. In 410 it had been decided to hold a synod every two years; but the political situation never permitted such frequent synods. In fact, we know of only thirteen synods between 410 and 775. The catholicos is highly independent. He alone could validly ordain metropolitans and bishops.

Not all the metropolitans had the same rights and duties. The metropolitans from Mesopotamia, Syria and Persia had the right to take part in the election of the patriarch, but the metropolitans 'from outside' – from the provinces – did not have this right. Only the metropolitans who were 'electors' and the bishops of their eparchies had the right to attend every patriarchal synod. The others had to send letters of union to the patriarch every six years in which they were expected to give an account of their provinces, indicate problem areas and pay the tax that was levied for the upkeep of the patriarchate. As Dauvillier remarks, this is the only place that Ebedjesus makes any reference to the law as applied in missionary territories, which is surprising, given the vast missionary expansion of the East Syrian Church at this period.

In the *Collection of Synodical Canons* the ninth treatise deals with the office of the patriarch. Earlier, in the sixth treatise, he had put forward the view that Jesus instituted the patriarchate when he told St Peter that he was giving him the keys of the Kingdom of Heaven.[92] Although there is acceptance of the general

[89] Omitting the famous canon 28 which stated that Constantinople should be regarded as first after Rome among the patriarchates.

[90] In 410 Bishop Isaac of Seleucia-Ctesiphon united the various dioceses to form one province.

[91] 'Catholicos' is a title used by the patriarchs of the East Syrian Church, the Armenian Church and the Georgian Church.

[92] 'Patriarchatum demum, qui est principatus principatuum in Ecclesia, designavit per traditionem clavium regni caelorum, quas Simoni dedit, cum principem apostolorum ipse Redemptor eum

principle that the patriarch can be judged by no one – *prima sedes a nemine iudicatur* – Ebedjesus does note that there could be situations when the patriarch could be deposed – for heresy or for some crime. When the patriarch dies, the metropolitans who are electors are to convene in the patriarchal city, each accompanied by three bishops from his eparchy. These bishops meet together with the bishops of the patriarchal province in the city of Baghdad, where the East Syrian patriarch had resided since the time of Patriarch Timothy I (778–803) until Patriarch Yaballaha III (1283–1317) transferred his residence to Maragheh.[93] Other notable church members who lived in the metropolitan city took part in the election of the patriarch along with the bishops. When a patriarch had been elected, the agreement of the faithful had to be obtained before it was possible to proceed to his consecration and enthronement in the city of Ctesiphon, which remained the traditional patriarchal see. Moreover, before the newly-elected patriarch could be consecrated, his election had to be confirmed by the caliph, and later, under the Mongols, by the Khan.

Concerning the powers of the patriarch, Ebedjesus includes two synodical letters, attributed by him to the 'Western patriarchs', but now known to be apocryphal, in which the independence of the see of Seleucia-Ctesiphon is accepted and declared. In the first of these, supposed to have been sent by the successors of the Apostles long before the First Council of Nicaea, these Western patriarchs grant the patriarchal dignity to the metropolitan of Seleucia-Ctesiphon and give him authority over all the other metropolitans of Assyria, Mesopotamia and Persia. He is the patriarch of the East. Provided he has the agreement of two of his bishops, he can nominate metropolitans, and it is his right to ordain all metropolitans and all bishops. It is the patriarch who grants 'permission to act' to those who are already ordained bishops. The patriarch also has the authority to pronounce sentence on all other members of his Church, but he himself can be judged only by the other patriarchs.

The second apocryphal letter, said to have come from the Western Fathers, is attributed to Caius, patriarch of Rome, and the patriarchs of Alexandria, Antioch, Constantinople, Jerusalem and to Gregory the Wonder-worker (213–270), bishop of Neocaesarea in Pontus.[94] This letter is addressed to the catholicos and states that metropolitans and other Eastern Christians have no right to bring accusations to them concerning their own patriarch.[95] Ebedjesus then gives an

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constituit, et praesidentiam super communitates ipsorum dedit ei verbis illis: tu quoque aliquando convertere et confirma fratres tuos'. CSC, 107.

[93] Bar Hebraeus died in Maragheh in 1286.

[94] St Gregory Thaumaturgus (c. 213–270), disciple of Origen and bishop of Neocaesarea in Pontus. A wealth of miracles were attributed to him.

[95] The claim seems exaggerated: 'Ipsis respondemus, patriarcham omnium Christianorum Orientis esse judicem; ipsius autem patriarchae iudicem esse Christum'. CSC, *Tractatus IX, Cap. V.* Bar Hebraeus, in his *Chronicon Ecclesiasticon,* mentions these so-called 'Letters from the Western Fathers' to the East Syrians, and states that he thought they were forgeries.

abridged version of the patriarchal synod of 424 which was the synod that proclaimed the independence of the East Syrian Church and which forbade all other patriarchs, for the future, to judge their catholicos.[96] Even if these letters are apocryphal, their inclusion in the law-book of the Church of the East shows how important it was thought for all the patriarchs to work in harmony with each other. It also shows that the Church of the East did not consider itself cut off and isolated from the rest of Christendom. There was one community of Christians which shared the faith in the Trinity and the divinity of Christ, and accepted the Creed of the Council of Nicaea, even though there were different ways of interpreting the formulations of the decrees of that council.

In this context, it is interesting to see how Ebedjesus treats the primacy of the bishop of Rome – especially when it is remembered that his collections of laws were approved by the East Syrian catholicos, Timothy II, in 1318, and became the official code of canon law for the whole East Syrian Church.[97] As we have seen, Ebedjesus lists the Arabic Nicene Canons among his sources and two canons from this collection deal with the patriarchates. He includes canon 2, which states:

> There are only four patriarchs in the whole world: first of all he whose see is at Rome, then he who is at Alexandria, then he who is at Ephesus, and finally the one whose see is at Antioch. For all the cities that have the status of metropolis, let their bishops be metropolitans and have authority over the bishops of the cities that are under them, and let the bishops be created by ordination by the metropolitan.

He adds canon 3:

> The see of Ephesus, which is patriarchal, may be transferred to the royal city of Constantinople. Also let the see which is at Seleucia, which is in the East, have permission to appoint metropolitans, as a patriarch (i.e. just like a patriarchal see); and when a synod meets in the region of the Romans, above the rest of the metropolitans let the titular of Seleucia sit in the seventh place.[98]

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[96] J. Dauvillier observes that the full text of the acts of this synod ought to have aroused suspicions concerning the authenticity of the so-called 'Letters from the Western Fathers', or at least about the second of these. There is certainly a lack of coherence here, but the appeal to letters from the West presupposes that a certain communion between the Churches was thought to be important.

[97] See J. S. Assemani, *Bibliotheca Orientalis,* vol. III, Part I, 325, where Assemani discusses Ebedjesus and his canonical collections.

[98] As quoted in OEJ, Book I, Treatise I, chapter 6. It is interesting to compare this with the authentic sixth canon of the Council of Nicaea: 'The ancient custom of Egypt, Libya and Pentapo-

These canons are included in the lists of canons at the beginning of the *Regulation of Ecclesiastical Judgments and Laws.* When Ebedjesus goes on later to deal directly with the patriarchal sees in the Church, he gives this account of how many patriarchates were established by the Apostles. He writes:

> Canon 9:
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> There are five cities, famous from antiquity, which we now recognize as capital cities. First of all, Babylon, which is in fact a metropolis, and also a capital and it was also a capital city for the Kingdom of the East Syrians, as we know from the first prophets. The second is Alexandria, built by Alexander the Great. The third is Antioch, built by Antigos and rebuilt by Antiochus, from which it gets its name of Antioch. The fourth is Rome the Great, built by Romulus, from which it gets the name of Rome. The fifth is Byzantium – called Constantinople after Constantine the emperor. There are therefore five cities. After the manifestation of God in the flesh, five metropolitans were instituted by the Blessed Apostles and called patriarchs. Concerning each of these places, it was not granted the gift of the patriarchate only on account of its excellence and antiquity, but also because of the Apostle who had evangelized it and the king who was there. To great Rome it was granted on account of the two pillars placed there, that is, Peter, head of the Apostles, and Paul, doctor of the gentiles. This is the first see and presides over the patriarchates. The second see is Alexandria, the third Ephesus (Constantinople) and the fourth Antioch. The reason for this is the fame of the Apostles, the builders and founders of their sees. Simon, that is Cephas, and Mark the Evangelist and Luke and John the Evangelist
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> The fifth of the Sees is Babylon in honour of the three Apostles and evangelists from its territories, Thomas of the Indies and of the Chinese, Bartholomew, that is Nathanael of the Arameans and Addairt of the great Seventy, Addaj and Mari, who evangelized Mesopotamia and the whole of Persia.[99]

All this shows that the tradition of a Roman primacy had not disappeared from the East Syrian Church. There is no hint that Ebedjesus thought his Church was cut off from Rome and the other patriarchates. He acknowledged a certain primacy of the patriarch of Rome over all the Churches – 'This is the first see and presides over the patriarchates'. This is stated even more clearly towards the end of his treatment of the power of the patriarch. 'The patriarch', he writes, 'is the universal father and all metropolitans and bishops are his sons... In a similar way, the Roman patriarch has authority over all the patriarchs, just as Blessed Peter had over the whole community, since it is the patriarch at Rome who takes

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lis shall be maintained, according to which the bishop of Alexandria has authority over all these places, since a similar custom exists with reference to the bishop of Rome. Similarly in Antioch and the other provinces the prerogatives of the churches are to be preserved'. DEC, vol. I, 9.

[99] CSC, Tract. IX, canon 1.

the place of Peter over the universal church'.[100] This gains confirmation from the delegation, mentioned earlier, that the East Syrian patriarch, Yaballaha III, sent to Rome in 1287, when Ebedjesus was already a bishop.[101] It is interesting to note that Ebedjesus attributes the Roman primacy to the fact that the bishop of Rome is the successor of St Peter. There was, however, a sense of autocephaly, according to which each Church looked after its own structure, administration and discipline.

Clerical Celibacy

When the controversies of the fifth century caused divisions in Eastern Christianity, church discipline concerning the marriage of the clergy had already been settled. So at the beginning of the fifth century all Eastern Churches had the same regulations that we have already discussed in previous chapters: married men could be ordained deacons and priests and were permitted to live as married men. After ordination, however, priests and deacons were forbidden to marry, or to re-marry if they became widowers. The Syrian Church of the East at first retained this discipline, but it very soon came to change it substantially. This was probably due to the influence of the Persian milieu which was strongly opposed to celibacy. In 486, a decree promulgated by the Synod of Mar Acacius laid down that any candidate for the orders of deacon or priest had to make a clear choice before he could be ordained: he had either to become a monk or get married. It was also decreed that priests and deacons who were not married, or who were widowers, could marry if they so wished.[102] Ten years later, in 496, the Synod of Mar Babai permitted all clerics 'from the patriarch to the lowest in the hierarchy, each person can openly contract a chaste marriage with one woman to beget children with all the rights and duties of a husband'.[103] In fact, the catholicos, Mar Babai himself, and his immediate successors lived as married men. It was also considered lawful for any cleric who became a widower to

[100] 'Placuit synodo oecumenicae, quod de omnibus gestis, quae incongrue fiunt sive arbitrio metropolitarum sive arbitrio episcoporum, potestas sit ipsi patriarchae pro auctoritate cognoscendi, nam patriarcha pater universalis est, et omnes metropolitae, ac episcopi sunt filii hereditatis eius. Honor autem patriarcha, tamquam patris super filios, dominatur. Et quemadmodum patriarcha potestatem habet faciendi quodcumque vult congruenter circa eos, qui potestati eius subsunt; similiter potestas sit patriarchae Romano supra omnes patriarchas, sicut beatus Petrus supra totam communitatem, quandoquidem locum etiam Petri tenet in universa ecclesia ille, qui Romae. Illum itaque, qui haec fuerit transgressus, synodus oecumenica anathemati subiicit.' CSC, Tract. IX, 165.

[101] See James A. Montgomery, *The History of Yahb Allaha III, Nestorian Patriarch, and of his Vicar, Bar Sauma, Mongol Ambassador to the Frankish Courts* (New York 1927). See also L'Abbé Huc, *Christianity in China, Tartary and Tibet,* (New York 1857), vol. I, 174–175.

[102] J.-B. Chabot, *Synodicon orientale,* 303–305.

[103] J.-B. Chabot, ibid. 312.

marry again.[104] But Mar Abha, a reforming catholicos, who lived in the first half of the sixth century, made it unlawful for the catholicos to live as a married man, and it is thought that this reform was extended also to bishops. When, towards the beginning of the ninth century, Simeon, the metropolitan of Persia, returned to full communion with the East Syrian Catholicos, Mar Timothy I, he was prohibited from marrying or living as a married man.[105] Canon 27 of the Catholicos, Mar Išo'barnum (catholicos from 823 to 828), laid down that priests and deacons, who became widowers could marry a second time. This would seem to imply that bishops could not.

This was the state of affairs when Ebedjesus was writing in the twelfth century. He does not deal specifically with this question either in his *Collection of Synodical Canons* or in the *Regulations of Ecclesiastical Judgements*, but when he is dealing with the legislation on the duties of priests and deacons, he clearly envisages a married clergy. In the sixth chapter of Treatise VI, he is propounding the law concerning clerics who commit adultery and he informs his readers that the penalty for a married priest is different from that for a cleric who is not married.[106] It is clear then that in the time of Ebedjesus priests and deacons could marry both before and after ordination, but that the bishops were chosen from among the monks.

Marriage

Ebedjesus deals directly with marriage in three of his books, in the two canonical collections we have been discussing and his short theological work, *The Book of the Pearl*.[107] The treatment of marriage in his first collection is quite brief and deals mainly with impediments to marriage. He starts off by giving a long list of persons who may not marry each other because their relationship is within the forbidden degrees of consanguinity or affinity. Such a detailed list would have been judged necessary in Persia where marriage within these forbidden degrees was permitted by their non-Christian neighbours. He notes that according to the Church's law, there are two stages in the formation of a marriage: the betrothal and the completion of the marriage. He then discusses in detail the betrothal ceremonies when the couple give their consent to marry each other. Every betrothal has to be performed in accordance with the ceremonial laid down, otherwise it is considered null by the church authorities. This

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[104] See E. Herman, 'Célibat des clercs (droit oriental)', in DDC, vol. III, cols 153–154. Dauvillier and de Clercq. *Le mariage en droit canonique oriental*, 174–176.

[105] See Dauvillier and de Clercq, ibid.

[106] CSC, 119.

[107] That is, CSC, 40–53; in the OEJ, Tract. III, 179–201 ; and in *The Book of the Pearl*, Tract IV, chapter VII: A. Mai, *Scriptorum Veterum Nova Collectio*, 361–362.

is to make clear that Christians are different from non-Christians and Jews.[108] But Ebedjesus notes that if, in fact, it is not possible for the couple to have access to a priest to perform the ceremony, then they should get four or five witnesses and go through a shortened form of betrothal.[109] The next question to be discussed is whether or not espousals can be dissolved. Ebedjesus states that espousals cannot be dissolved unless serious causes arise similar to those which would give grounds for a divorce of a completed marriage, and he adds that he will be discussing these later.[110] In fact, he deals with divorce much more fully in his second collection, which I propose to look at now.

For the East Syrian Church matrimony is not considered one of the seven sacraments, although Ebedjesus is aware that the other Christian Churches do consider it a sacrament. However, he does teach that matrimony is to be held as sacred in the Christian life. This is clear from his treatment of marriage in *The Book of the Pearl,* where he writes that Holy Scripture refers to marriage, contracted in accordance with Christian law, as a work of holiness; it is therefore a holy thing and the marriage-bed a thing of purity, especially because St Paul places this mystery among supernatural things.[111] It is because of this sanctity of marriage that divorce is forbidden by the Lord, and Ebedjesus quotes on a number of occasions the passage from St Matthew's Gospel, forbidding divorce and the statement, 'What God has joined together let no man put asunder'.[112] But it is clear that, in the canonical sources of his Church, the clause in St Matthew's Gospel – 'unless it be for adultery' – has been interpreted as a truly exceptive clause, allowing divorce and re-marriage for special reasons. These special reasons are discussed in the *Collection of Synodical Canons,*[113] but they

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[108] 'Quaevis desponsatio quae extra praescriptum modum ineatur, nulla reputatur a nobis: nam in hoc distinguimus desponsationem christianorum ab illa ethnicorum et crucifigentium (Iudaeorum).' CSC, 44.

[109] This recalls the current law of the Catholic Church which allows a couple to marry in similar circumstances, if it is not possible for a priest to be present. 'If one cannot have present or have access to a priest who is competent according to the norm of law without grave inconvenience, those intending to celebrate a true marriage can validly and licitly celebrate it before witnesses alone: 1°, in danger of death; 2°, outside danger of death, as long as it is prudently foreseen that such circumstances will continue for a month'. CCEO, canon 832.

[110] 'Quodsi contigerit, ut post celebratam desponsationem secundum canones ecclesiae, velit unus ex eis<sponsis> vel ambo <velint> separari ab invicem, hoc certe fieri haud permittimus, nisi forte causae concurrant, propter quas christiani separantur a communicatione (coniugio, nuptiis); et sane absque iis causis neque ante thalamum, neque post thalamum solutio fieri debet.' CSC, 46.

[111] 'Sanctitatis exercitationem sacra volumina appellant coniugium illud, quod ex norma christianae legis contractum fuit... Sanctum igitur prorsus matrimonium est, mundusque eius thalamus, praesertim quia Paulus mysterium hoc inter res supramundanas collocavit: sacramentum hoc magnum est; ego autem dico in Christo et in Ecclesia'. *The Book of the Pearl*, Treatise IV, chapter VIII, in A. Mai, *Scriptorum Veterum Nova Collectio,* vol. X, 360.

[112] Mt. 19:5–9.

[113] CSC, Treatise II, chapter xvii, 'Quot ob causas dimittatur uxor a viro, et sponsus a sponso'.

are explained at greater length in the *Regulation of Ecclesiastical Judgments.*[114] Ebedjesus begins his treatment of marriage in his second canonical compilation by giving a definition of marriage:

> A lawful marriage is the common consent of a man and a woman to live together, consecrated by the witness and the prayer of the priest; it is a natural union and communion for the mutual help of each in sustaining this temporal life, in doing what has to be done and generating offspring who will succeed them.[115]

He then proceeds to provide a summary of his Church's teaching on marriage as this was put forward in his canonical sources, particularly in the Synod of Mar Iš'oyahb in 585. The aim of marriage is twofold. The first aim is the generation of children, and in connection with this, the satisfying of desire. The second aim is the mutual help the spouses bring to each other 'to bear the burden of the labours of this miserable life'.[116] In Chapter IX his outline of the detailed pre-nuptial inquiry, that should be carried out before any betrothal can be permitted, has a very modern ring to it.[117] In Chapter XV, he discusses divorce. According to the teaching of Patriarch Timothy I, there are four reasons for granting divorce. The first is for the sake of piety, if the spouses wish to observe perfect purity and to abstain from sexual intercourse; the second is adultery and fornication; the third is 'spiritual prostitution', which is the denial of Christ or indulging is sorcery or magic.[118] The fourth reason is if one spouse attempts to murder the other.

Ebedjesus explains that adultery is a cause of divorce because by having a sexual union with another man a woman destroys the union. He then lists a number of conditions or diseases that could give grounds for divorce: if a man marries a woman who suffers from demonic possession, leprosy or elephantiasis, or who is unable to consummate the marriage. But these would be grounds for divorce only if the husband knew nothing about them before the marriage. According to the teaching of Patriarch Timothy I, in cases of adultery the guilty

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[114] Book II, Treatise III, *passim,* but particularly in chapter xv: 'De solutione <vel divortio>: cur prohibeatur, et ob quales causas fiat'. OEJ, 190–193.

[115] 'Coniugium legitimum est unanimis consensus viri ac mulieris <cohabitandi>testimonio et oratione sacerdotali <consecratus>; communio et coniunctio naturalis in utriusque adiutorium ad sustentandam vitam temporalem, ad explenda necessaria, et ad generandam prolem quae ipsis succedet'. OEJ, 170.

[116] OEJ, 172. He adds: 'Igitur finis revera primus coniugii est procreatio filiorum et sedatio impetus concupiscentiae, aut adeptio auxilii, vel utrumque simul'.

[117] Ibid, 185: 'De investigationibus et examinibus ante desponsationem'.

[118] 'Quattuor causae sunt quibus et propter quas separantur viri a mulieribus et mulieres a viris. Prima quidem est ad servandam castitatem, cum vir non convertitur ad aliam mulierem, nec mulier convertitur ad alium virum. Secunda, scortatio corporalis et adulterium. Tertia, scortatio spiritualis, quae est negatio Christi seu magia. Quarta, mors seu occisio'. Ibid, 190–191.

party is not free to re-marry.[119] Ebedjesus concludes this chapter by raising the question why a husband could send away an adulterous wife, but the wife could not send away an adulterous husband. The answer, from Išo'bokht,[120] is that many more evils follow from the adultery of the wife than from that of the husband, such as doubt about who is the children's father.[121] In the *Collection of Synodical Canons*, Ebedjesus says that the Greek emperors give additional reasons for which the wife may be dismissed. We have already seen these same reasons in the discussion of the *Nomokanon* of Bar Hebraeus: staying away from home without the permission of her husband; going to the theatre to see indecent shows; and travelling around without her father, or husband or brother or son. In all these cases the implication is that the husband is free to marry a second time. Ebedjesus also discusses the case where husband and wife simply fail to get on with each other – what we might call today a case of mutual incompatibility. The directive is that every effort should be made to resolve the difficulty and the couple should try for a period of ten years. However, if after ten years there is no change, then the marriage can be dissolved by a judge, provided there are no children, and the husband or wife is free to remarry.[122]

Such, in outline, is the teaching of Ebedjesus on the nature of marriage and on the canon law concerning divorce and re-marriage. Clearly the Assyrian Church of the East accepted fully Christ's teaching on the indissolubility of marriage, but it maintained that there could be special exceptional reasons for permitting divorce and re-marriage. In Ebedjesus we have a clear and comprehensive account of the law of his Church on this matter which I have summarized. It is similar to what we have already seen in the *Nomokanon* of Bar Hebraeus and in the *Nomokanon in XIV Titles* in Constantinople. On this matter of divorce and re-marriage, there has been a tradition in the Eastern Churches quite different from that of the Latin Church, which has consistently adhered to a much more strict interpretation of Christ's prohibition of remarriage after divorce. The views of Ebedjesus have a decidedly ' modern' ring about them and could serve to support some desirable developments in the marriage field, such as betrothal, reconciliation and so on. They are, in fact, refreshing, while also being quite tough.

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[119] OEJ, 192.

[120] Išo'bokht is one of the authorities Ebedjesus quotes very frequently. He composed a systematic treatise, mainly on secular law, towards the end of the eighth century or beginning of the ninth, which Ebedjesus refers to in his Catalogue as *The Book of Ecclesiastical Judgments.* Little is known about the author except that he was metropolitan of Persia. His book has been edited by E. Sachau, *Syrische Rechtsbücher,* vol. III (Berlin 1914), 1–201. For a detailed description of the treatise, see J. Dauvillier, 'Chaldéen (droit)' in DDC, vol. III, cols 340–343.

[121] OEJ, 192–193.

[122] CSC, chapter xviii: 'De muliere contentiosa et viro contumelio'.

Conclusion

Ebedjesus himself was famous in his own lifetime among all Eastern Christians. His canonical collections were much appreciated by his Church because he provided the East Syrian bishops with canonical collections that were easy to use, in which the matter was laid out in a logical and systematic way, and which made it possible for them to consult and use almost all the important texts of the laws of their Church. In fact, at the Synod convoked by Patriarch Timothy II in 1318 – in which Ebedjesus took part – official recognition was given to the two canonical collections of Ebedjesus. The first canon of this Synod invites all bishops and heads of churches to meditate upon and observe carefully the canons of the East Syrian Church, and above all the two volumes of the short *Collection of Synodical Canons,* as well as the second work, *Regulation of Ecclesiastical Judgements.*

These volumes remained the fundamental law-books for the East Syrian Church and have been frequently copied and invoked as the authoritative collection of East Syrian law. They are used even to this day. J. Dauvillier has written a masterly and comprehensive study of Ebedjesus in the *Dictionnaire du Droit Canonique.*[123] He begins his assessment by drawing attention to a number of defects that are to be found in the canonical collections made by Ebedjesus. He notes a lack of a critical sense in his accepting apocryphal sources and in making a number of false attributions. Also in his treatment of the hierarchy in his *Regulations,* Ebedjesus is lacking in systematic order. While his compilations bring out clearly the central place of synodical government for his Church, he puts forward no theory of episcopal power and his treatment of synodical procedure is vague. He seems to have in mind only the bishops of Mesopotamia, and shows no interest in the missionary territory of his Church, which was immense at that time. More importantly, in his treatment of the power of the patriarch, there is nothing about his need to consult the community.

However, in spite of these imperfections, Dauvillier considers Ebedjesus to have been a very successful canonist, possessing real originality. He did not simply copy the work of Gabriel of Basra, as was argued by Professor Nallino, though, of course, he did take a number of texts from that writer. In any case, his aim was to provide the texts that were actually applied by the judges in his Church's courts. Ebedjesus's arrangement of his authorities was his personal systematization. He made a judicious selection of canonical texts and he made summaries where necessary, bringing the canons up to date and harmonizing apparent contradictions. He was bold enough to modify texts in accordance with existing customs, or, at times, as he thought fit. This becomes clear when one compares his earlier *Collection of Synodical Canons* with the much later *Regulation of Ecclesiastical Judgements.* He has a clear and precise mode of

[123] J. Dauvillier, 'Ebedjésus', DDC, vol. V, cols 91–134.

presentation, and his systematic arrangement of the material is well-planned and original. Dauvillier thinks that the originality of Ebedjesus already appears in the manner in which he organized the *Collection of Canons* but that it comes out much more clearly in the *Regulation of Ecclesiastical Judgements,* compiled towards the end of his life. This carries a much more personal stamp, especially in his treatment of marriage. Finally his constant reliance on the *Synodicon orientale* ensures that his work is specifically East Syrian

There are, of course, similarities with the law of the other Churches of the East and of the West. There is a common basis for the canon law in the conciliar canons. The East Syrian Church claimed to be keeping to the ancient apostolic foundations of all the Christian Churches. Hence the retention of the ancient traditions and the canons of the great councils of antiquity that Ebedjesus numbers among his canonical sources. He also had recourse to the orientalized Roman Law that is to be found in the *Syro-Roman Law-Book.*

All this constituted a common basis for the canon law of the East Syrians, in line with the other Christian Churches. Moreover, the same spirit guided the whole Church, in the East as in the West, as identical problems were being faced. This explains why we so frequently find similar solutions being provided in different parts of the Church, independently from each other. But in Ebedjesus direct borrowings from Western sources are rare. The great Byzantine canonical collections and *Nomokanons*, Justinian's codification of Roman Law in the sixth century, the ninth-century collection of Byzantine Law by Emperor Leo VI (the *Basilika)*, are not mentioned in the canonical collections of Ebedjesus. Nor are the great Latin codifications of the West. This should not come as a surprise. Each patriarchal Church had and was expected to have its own particular law in keeping with the culture and customs of its own people. This explains the serenity with which Ebedjesus appears to write about the differences between the approach of his own Church and that of Christians in Alexandria and Constantinople and Rome. For him the faith articulated in the Council of Nicaea is what unites all Christians.

In the matter of secular law what we do see in Ebedjesus are certain resemblances to Muslim law – but even here the common traits that we find are explained by the same eastern milieu in which both Muslims and Christians were living. There is nothing like the borrowings we have seen in Bar Hebraeus. The law of the East Syrian Church always appears as an autonomous juridical system quite distinct from all others. It is to Ebedjesus' credit that he was able to give this East Syrian law definitive expression. He shows outstanding qualities as a jurist; and displays a profound mastery of the practical aspects of judicial law. He stresses the need for equity. For Ebedjesus the law is by no means a pure technique. It has to be enlivened by the principles of justice, as propounded in the Church's moral teaching and expressed in many passages of Holy Scripture. His canonical collections bear witness to the nobility of his

thought and the sincerity of his piety. He vigorously denounced all abuses in the courts, all intrigue concerning bishoprics and the like. He defended the freedom of the Church against secular intrusions. In the face of Islam, he maintained firmly the values of Christian civilization. Dauvillier concludes his long article as follows:

> In providing a *Summa* of the East Syrian law of his time, Abhdiso did not keep or systematize as many canonical texts as Gratian did in his *Concordia;* but his work is superior to the *Concordia Discordantium Canonum,* by its order, its clarity and its elegance. For the spirit of equity which inspired it it is in no way inferior to the codifications of western canon law. The same profound tendencies are to be found there. To the historian of the twentieth century his collection provides a precious *tableau* of the institutions of the Chaldean nation; it brings alive before his eyes one of the most attractive aspects of the medieval Christian civilization of Asia.[124]

At the end of this review of the canon law of two large Churches outside the Byzantine empire, a number of reflections come to mind. The first is how faithful to the earliest Christian traditions both Churches professed to be. Both Churches claimed to be preserving the traditional faith that was proclaimed at the Council of Nicaea in 325. They professed belief in Holy Scripture, in the Blessed Trinity, in the mystery of the Incarnation, believing Jesus Christ to be truly God and truly man, but differing in how this mystery should be expressed in doctrinal formulae.[125] The canonical collections of both Churches included the earliest traditions in church discipline as formulated in the *Apostolic Canons* and in the legislation of a number of fourth-century councils, which, in fact, were the basis of all the canonical collections in the East and in the West. Among these traditions, synodical government through regular episcopal synods held a central place; church discipline was legislated for and the bishops were elected in the synod. This can be seen in the canonical collections of both Churches, but it is particularly clear in Ebedjesus, who gives such a prominent place to legislation passed by the synods held by the patriarchs of his own Church. This professed fidelity to Christian tradition comes out quite strikingly in the canonical collections of both Churches.[126]

Another striking feature in these two Churches is how they succeeded in flourishing while under the domination of Islam. It is ironic, of course, that it was the Islamic conquests that permitted these Christian communities to grow and develop, untroubled by persecution at the hands of the Orthodox rulers in

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[124] J. Dauvillier, DDC, vol. V, col. 134.

[125] 'Quia vero omnes christiani accipiunt fidem nicaeanam eique assentiunt, *aliquantulum tamen in eius explicatione dissentientes,* propterea omnino necessarium mihi visum est initio horum canonum scribere symbolum fidei', Ebedjesus, at the beginning of his second collection. OEJ, 33.

[126] 'Quin declinem a semita regia canonum patrum sanctorum,' Ebedjesus, in the preface. OEJ, 24.

Constantinople. A factor that distinguishes both these Churches from those at Rome and Constantinople is that they were free from that direct involvement with the civil administration that had so strongly influenced the development of church administration both in Rome and in Constantinople: the papacy's close involvement with its own temporal power in Italy and with the civil powers, first of all the Frankish empire and then with the 'Holy Roman Empire', and the relationship between patriarch and emperor in Constantinople. The Churches of Bar Hebraeus and Ebedjesus were free of such entanglements and so were able to develop along their own chosen lines, uncompromised with the civil administration, except insofar as they had to live in harmony with it. The rulers in Syria and Persia were not Christians and the Churches there never enjoyed the position and privileges of a state religion. What if this had been true in the West? How would the papacy have developed, free from entanglement with temporal power and the need for political alliances and for such forgeries as the Donation of Constantine? How would the Church at Constantinople have fared, if Justinian and subsequent emperors had shown no interest in religion and left the Church to manage its own affairs? How far did the political reality determine the direction of the growth of papal power in the Middle Ages? What if there had been no Investiture Controversy and no need for one in the West? What if the Church in Constantinople had been free to elect its patriarch without any imperial pressure?

Another impressive aspect of these canonical collections has been the absence of intolerance and intransigence. The differences between the Churches are discussed with a certain serenity and there seems to have been quite a strong ecumenical spirit. When Bar Hebraeus died, the patriarch of the Church of the East, Mar Yaballaha III, declared a day of mourning and his funeral was attended by clergy and people from all the Christian Churches, Greek and East Syrian as well as from his own Miaphysite Church. In neither Bar Hebraeus nor in Ebedjesus do I recall coming across the mutual recriminations and condemnations that colour the relations between Rome and Constantinople in these centuries. Why was this? It may have been because they constituted a Christian minority in a largely Muslim population.

In the law of both Churches there is a place for the patriarchs as the supreme authorities in the whole Christian community, and a primacy of the Roman see is acknowledged, particularly by Ebedjesus. Yet these Churches lived their lives independently from the West. Of course, political circumstances cut them off from the West, to a large extent, and compelled them to lead their own lives as best they could in isolation. This encouraged the growth of an ecclesiology, which respected diversity in unity. All professed fidelity to their Christian tradition and they witnessed to this, at times even under persecution; but the attitude was that each Church should govern itself according to its own culture and political environment. This attitude was not unknown in the West, at least in the

early centuries. Pope Gregory the Great encouraged diversity in unity: 'Safeguarding the unity of the sacraments, the Church gathers together the faithful peoples according to the manifold variety of their customs (*mores*) and languages'.[127]

Finally the missionary expansion of these Churches was remarkable, particularly when one realizes that they could count on no support and back-up from their Muslim rulers. Yet they succeeded in communicating the faith. The 'East Syrian preachers had brought the faith to remote regions as Turkestan, Mongolia, Siberia, China, Japan and India. Such was the missionary charisma of this Church that it is known in history as the "Church on fire". The number of their followers during the twelfth and thirteenth centuries outnumbered those of the Latin and the Byzantine Churches put together and geographically they were more spread out than the Roman Church'.[128]

[127] See *Moralia*, xxx.6.22; vi.32.50; xvi.55.68. Quoted by R. A. Markus, *Gregory the Great and His World* (Cambridge 1997), 73. Not all the bishops of Rome would have agreed with this principle, as Markus observes. Pope Innocent I, Leo the Great and Gregory VII, for example, had a different approach to church unity.

[128] X. Kochuparambil, *Evangelization in India* (Kerala 1993), 249.

Conclusion

As I said at the outset, I have attempted in this book to give an account of how canon law developed in the first millennium of the Church's history through the work of a number of distinguished canonists. The selection has been a personal one and I realize that there were many other eminent canonists in the period under discussion who have not been mentioned. However, the men I have selected influenced the life of the Church in an exceptional way, and their importance has, I hope, been sufficiently demonstrated. The work of Dionysius Exiguus pointed the way towards and constituted the foundation for the development of Western church legislation almost exclusively by means of papal decretals. John Scholastikos produced a collection that fostered the combination of conciliar canons, patristic texts and imperial legislation. This was consolidated by the anonymous seventh-century compiler of the *Nomokanon in XIV Titles* – conciliar canons, imperial constitutions and patristic texts. The forgers of the *Pseudo-Isidorian Decretals* gave a strong impetus to the development of papal centralization and the insistence on clerical celibacy in the West. Saints Cyril and Methodios laid the foundations for the Byzantine structure and discipline of the Slavonic Church. Gratian, by compiling his *Concordia Discordantium Canonum* at that particular period, greatly assisted the rapid development of a highly centralized papal monarchical government of the Western Church. Theodore Balsamon produced the influential commentary on what became the basic manual of ecclesiastical law for Constantinople, stressing the imperial role in church law and with an unfortunate bias against the Latin Church. The discussion of the two Eastern bishops, Bar Hebraeus and Ebedjesus, not only brought into the picture the work of two exceptionally gifted canonists, it was also a reminder of what were, in the Middle Ages, two of the largest Churches in Christendom, which had achieved an outstanding missionary expansion to the Far East. This comparison between the canon law that guided the Churches in the East and in the West has brought into sharper focus both the similarity and the diversity in the different canonical traditions. It has also indicated parallel developments that took place within the different Christian communities. The same fourth-century conciliar canons and apostolic traditions formed the common basis for all subsequent canonical collections in both the East and the West. From the point of view of a Latin Catholic it has been instructive to observe the disciplinary autonomy which the Churches of the East possessed right from Apostolic times.[1] Common to all the collections has been the desire to be faithful to the Apostolic tradition. All professed fidelity to the doctrinal teaching of the First Council of Nicaea concerning the Holy Trinity and the mystery of the Incarnation.

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[1] Pope John Paul II acknowledges this in his letter to the Church in Russia, commemorating the first millennium of Russian Christianity. See *Euntes in mundum*, AAS (1988), 949–500.

A point that recurs again and again in the early collections of canon law is the key role that councils of bishops played in the early centuries. The normal way of going about solving problems or healing disunity or promoting Christian reform was to call a council of the bishops of the region. Constantine called the first ecumenical council as the most effective way of trying to restore unity to a divided Church, torn apart by Arian errors. This set the pattern for the other ecumenical councils of the first millennium. Later in the fourth century, as we have seen, regional bishops proceeded in a similar way in different parts of the East. The Church in Africa acted in the same way. St Augustine advised the Bishop of Carthage that the most effective way of bringing about the much needed reform would be to hold regular episcopal synods. The result was the series of synods that were held in Carthage between 393 and 419. Canon law grew out of these councils; the decisions of the synod were regarded as normative and called 'canons', to distinguish them from the civil laws. Very soon collections of these conciliar canons were made, as we know from the first canon of the Council of Chalcedon: 'We have deemed it right that the canons hitherto issued by the saintly fathers at each and every synod should remain in force'. In this way church law was the sum of the decisions reached by bishops in council throughout the Church. This led to the practice of directing the Church by means of episcopal synods. Hence the canons stipulating that the bishops of every region should meet in council twice a year. This was regarded as so important that we find canons on the subject in a number of the early councils. The way was shown in canon 5 of the First Council of Nicaea:

> Concerning those, whether of the clergy or the laity, who have been excommunicated, the sentence is to be respected by the bishops of each province, according to the canon which forbids those expelled by some to be admitted by others. But let an inquiry be held to ascertain whether anyone has been expelled from the community because of pettiness or quarrelsomeness or any such ill nature on the part of the bishop. Accordingly, in order that there be proper opportunity for inquiry into the matter, it is agreed that it would be well for synods to be held in each province twice a year, so that these inquiries may be conducted by all the bishops of the province assembled together, and in this way by general consent those who have offended against their own bishop may be recognized by all to be reasonably excommunicated, until all the bishops in common may decide to pronounce a more lenient sentence on these persons. The synods shall be held at the following times: one before Lent, so that, all pettiness being set aside, the gift offered to God may be unblemished; the second after the season of autumn.[2]

[2] Canon 5 of the Council of Nicaea, DEC, vol. I, 8.

Similar laws were re-enacted many times in the early centuries. The legislation was clear enough, but by mid fifth-century it was not being implemented everywhere, as is evident from canon 19 of the Council of Chalcedon:

> We have heard that in the provinces the synods of bishops prescribed by canon law are not taking place, and that as a result many ecclesiastical matters that need putting right are being neglected. So the sacred synod decrees that in accordance with the canons of the fathers, the bishops in each province are to foregather twice a year at a place approved by the bishop of the metropolis and put any matters arising to rights. Bishops failing to attend who enjoy good health and are free from all unavoidable and necessary engagements, but stay at home in their own cities, are to be fraternally rebuked.[3]

When Justinian II wanted to bring about needed reform in the Church of the late seventh century, he decided that the most efficacious way would be by means of a council of bishops. So he convoked what has come to be known as the Council *in Trullo* in 691. This council too renewed the canon stipulating regular synods, but because of 'barbarian incursions and other intervening causes', it resolved that a synod once a year would suffice.[4] The question of regular synods was again discussed at the Second Council of Nicaea in 787, at which it was decided that, because of difficult situations and lack of resources, it would be sufficient to hold provincial councils once a year, as the fathers had decreed at the Council *in Trullo*.[5] All this demonstrates how the collegiality of the bishops (to use modern terminology) was recognized and exercised in practice. Synods of bishops were the normal way to approach difficulties and to promote reform.[6]

It is against this background that we can see how, in practice, the Roman primacy was exercised throughout the first millennium. What the canonical collections demonstrate is that the Churches of the East were free to govern their Churches according to their own laws and customs, without any intervention by the bishop of Rome. Even those popes who, like Innocent I and Leo the Great, stated very clearly their claim to papal supremacy, did not in fact intervene in the ordinary running of the Eastern Churches. The Eastern Churches did appeal to the bishop of Rome in a number of critical situations and acknowledged a Roman primacy, but there is little evidence that the Eastern patriarchs

[3] Canon 19 of the Council of Chalcedon, DEC, vol. I, 96.

[4] The Council *in Trullo*, canon 8.

[5] Canon 6 of the Second Council of Nicaea (787), DEC, vol. I, 143–144. This long canon provides a good description of how the canons were held in reverence in the early Church as 'divine and life-giving laws of God'.

[6] Gratian includes a number of these canons in the *Decretum*, but he gives them a new slant, maintaining that the authority to call and approve councils rests with the Holy See in Rome. See Gratian, D.17, d.a.c.1, and D.18, on provincial councils. A number of his canons here, of course, are forgeries from the False Decretals, and they show how the early approach had been largely superseded by a very centralized papal authority in Rome.

subscribed to the papal supremacy of jurisdiction, such as that claimed by Leo the Great (440–461) or Pope Gelasius (492–496). In any case, none of the popes of the first millennium thought it his duty to make laws for the Eastern Churches of Constantinople or Antioch or Alexandria, in the way that they came more and more to do for the whole of the Western patriarchate. The idea that the bishop of Rome could, or would even want to, exercise supreme ordinary jurisdiction in East and West did not enter anyone's head at that time. There was no move towards uniformity in discipline and custom in the first millennium. Even when Pope Gregory VII's reform movement imposed uniformity of discipline on the Latin West, no one, apart from men like Humbert of Silva Candida, thought of applying this to the East, – not even Pope Gregory VII.[7] The primacy of the bishop of Rome that was acceptable to Patriarch Photius and to Pope John VIII, and expressed in the canons of the Council of Constantinople of 879/880, was something notably different from that defined a thousand years later in the third paragraph of *Pastor Aeternus* of the First Vatican Council.[8] Yet the canonical collections from East and West studied in this book show clearly that all the Churches looked to the bishop of Rome for leadership and acknowledged a certain primacy because it was the see of the Apostle Peter and continued the role of Peter in strengthening the faith of his brethren. This did not entail Roman legislation for the whole Church.[9]

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[7] See the comprehensive and well-documented study by H. E. J. Cowdrey, *Pope Gregory VII 1073–1085* (Oxford 1998), 481–487.

[8] 'Wherefore we teach and declare that, by divine ordinance, the Roman church possesses a pre-eminence of ordinary power over every other church, and that this jurisdictional power of the Roman pontiff is both episcopal and immediate. Both clergy and faithful, of whatever rite and dignity, both singly and collectively, are bound to submit to this power by the duty of hierarchical subordination and true obedience, and this not only in matters concerning faith and morals, but also in those which regard the discipline and government of the church throughout the world. In this way, by unity with the Roman pontiff in communion and in profession of the same faith, the church of Christ becomes one flock under one supreme shepherd. This is the teaching of the catholic truth, and no one can depart from it without endangering his faith and salvation'. DEC, vol. II, 813–814. This use of terms like 'ordinary power' that is both 'episcopal and immediate' caused great difficulties after the council and had to be carefully explained.

[9] At this point one cannot but think about the recently promulgated *Code of Canons for the Eastern Churches*, promulgated by the bishop of Rome in 1990 for all the Eastern Catholic Churches in communion with Rome. This was not entirely an innovation, since it was bringing up to date the legislation that had been promulgated for the Eastern Catholic Churches by Pope Pius XII between 1949 and 1957, but long before its promulgation in October 1990 it was criticized by a number of the leaders of these Churches. They thought that the promulgation of a new code ought to be, not an act of the bishop of Rome alone, but a collegial act of the pope with the patriarch (or major archbishop) and the synod of each Eastern Church. See V. J. Pospishil, *Ex Occidente Lex* (New Jersey 1979), 159 and 162. The proposal fell on deaf ears. The *Code of Canons of the Eastern Churches* does, in fact, implement a number of the conciliar directives concerning the Eastern Churches. For this reason I have referred to it in this book. However, the new code has not succeeded fully in embodying the ecclesiological vision of the Church as a communion of sister

It is also noteworthy how all the Churches gave a special place to the five patriarchs as having a special role in the government of the Church, all of them acknowledging a special role to the bishop of Rome as the successor of St Peter. During the first millennium of the Church's history, diverse administrative, disciplinary and liturgical usages could legitimately co-exist with complete unity in the faith in Jesus Christ. These divergences were accepted on each side. In the earlier centuries there were voices – both in the East and in the West[10] – calling for uniformity of discipline throughout the Church, but these were isolated cases. There was no strong drive for uniformity of discipline and conformity of customs until the Gregorian reform movement within the Latin Church in the late eleventh century.

My investigation into how the canon law of the Churches developed during the first millennium of Christianity has drawn attention to an interesting diversity. It has shown that there were different ways of exercising legislative authority in the Church. In Rome and the Western Church, there developed a strong, highly monarchical and very centralized mode of government by the bishop of Rome, becoming more and more centralized in the Middle Ages. In Constantinople and the Eastern Empire, patriarchal synodical government through the Holy Synod was central, though this was modified by strong imperial legislation. The ideal aimed at was harmony between imperial and patriarchal government. In the Churches in Syria and in Persia, the basis for the canon law was formed by synodical canons, promulgated by the Holy Synod, though there was also strong, centralized patriarchal government, especially in the East Syrian Church. As we have seen, each system developed within its own cultural environment and its own perspective, and these varied greatly.We are all conditioned by the past and it is a truism to say that each nation's history carries with it a burden of violence and conflict from which it is not easy to escape. But how does one overcome this conditioning by the past? In order not to remain prisoners of the past, there is need of what has been called a 'healing of memories'. This does not mean trying to forget what has happened in the past. It means re-examining past events with a new attitude of mind and heart and learning precisely from the experience of the suffering that has been caused by past events both to our enemies as well as to our friends. The attempt has to be made to replace the deadly cycle of revenge with a new-found freedom of forgiveness.

> For this to happen, we must learn to read the history of other peoples without facile or partisan bias, making an effort to understand their point of view. This is a real challenge also on the level of education and culture.

Churches that the Second Vatican Council put before us. For this reason it has been a great disappointment for many Eastern Catholics.

[10] One recalls the attitude reflected in the legislation of the Council *in Trullo*, in Constantinople, and in various letters of Pope Innocent I (401–417) and Pope Leo the Great, in Rome. See R. A. Markus, *Gregory the Great and His World*, 75.

> This is the challenge for civilization. If we agree to set out on this journey, we shall come to see that mistakes are never all on one side. We shall see how history has sometimes been presented in a distorted way and even manipulated, with tragic results. A correct re-reading of history will make it easier to accept and appreciate the social, cultural and religious differences between individuals, groups and peoples. This is the first step towards reconciliation, because respect for differences is a necessary condition for genuine relationships between individuals and between groups. The repression of differences can give rise to an apparent peace, but it generates a precarious situation which is in fact a harbinger of new outbreaks of violence.[11]

What is being discussed here are divisions between and within nations. But the principle also applies to the divisions that have arisen in the Church. The Roman Catholic Church has now come to accept the legitimacy of diversity. It openly acknowledges that, with unity in faith as the first principle, the Church has taken on different forms in different parts of the world. This is true in a particular way for the Western Church and for the Churches of the East, before their progressive estrangement from each other. At the Second Vatican Council the Decree on Ecumenism acknowledged that,'from the earliest times the Eastern Churches followed their own discipline, sanctioned by the Holy Fathers, by Synods, even Ecumenical Councils. Far from being an obstacle to the Church's unity, such diversity of customs and observances only adds to her beauty, and contributes greatly to carrying out her mission'.[12] The decree has in mind here the characteristic disciplinary autonomy which the Eastern Churches enjoy, and, as Pope John Paul II has observed, this autonomy 'is not the result of privileges granted by the Church of Rome, but of the law itself which these Churches have possessed since Apostolic times'.[13] Moreover, if we think of the ninth century, for example when there had been periods of difficulty and misunderstanding between Constantinople and Rome, it was still possible to have and to encourage what can, in some ways, be considered a joint missionary enterprise, blessed both by the Church of Constantinople in the person of her patriarch, Photios, and by the Church of Rome in the persons of two popes, Pope Hadrian II and Pope John VIII. The pioneering work of Saints Cyril and Methodios is an outstanding example of missionary cooperation between Churches of different traditions.

Diversity within the united Church is what has made the greatest impression on me in my study of the canonical collections. Throughout the first millennium

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[11] Pope John Paul II, *Message for World Day of Peace,* January 1997, AAS, vol. 89 (1997), n. 3, 193.

[12] *Unitatis redintegratio,* nn. 14–16.

[13] *Euntes in mundum, n. 10.* Apostolic Letter of Pope John Paul II of 25 January 1988, on the occasion of the millennium of the conversion of Russia to Christianity. AAS, vol. 80, Part 2 (1988), 950.

of the Church's history, there existed great diversity in discipline, in forms of liturgical worship, in spirituality and theological expression of the Christian faith within the Christian community. This diversity could be linked with complete unity in faith in Christ and his Church and his sacraments, as in the case with Rome and Constantinople, which were in full communion with each other for almost the whole of the first millennium. But differences about theological expressions did cause division, as in the case of the Syrian Orthodox Church and the East Syrian Church of the East. Yet even these Churches shared the Christian faith in the Holy Trinity, in the mystery of the Incarnation and in the divinity of Christ, and professed fidelity to the Creed as formulated at Nicaea in 325, to the apostolic traditions as preserved in the *Canones Apostolorum* and the canons of the early councils. In this context, what is noticeable is the, at times, almost decisive influence that the political situation had on the development of the Church's administration, and on its unity. This is as true of the West as it is of the East. The political situation in Italy and in the Frankish kingdoms influenced greatly the development of the papacy in Rome, as did the position of the emperor in Constantinople. Ambiguities in theological formulations and the political antagonism between Alexandria and Constantinople, as well as the antagonism between the strong personalities involved, played an important part in the forming of divisions in the Church. Agreements are now being reached concerning theological formulae that once shattered the unity of the Christian community and have kept it disunited for centuries.[14] We now see more clearly that it is possible to have different formulations of the one faith, which, as the Second Vatican Council stated, are complementary not contradictory.[15] This

[14] 'Quarrels about words and formulations' was, as we have seen in the last chapter, how Bar Hebraeus described the division between the Churches in the thirteenth century. This view has received confirmation in the recent agreements that have been signed by the bishop of Rome and a number of leaders of Eastern Churches. For example, the *Common Declaration* issued by Pope Paul VI and the Coptic Pope Shenouda III in 1973, expressing a common faith in the mystery of the Incarnation, in the perfect humanity and divinity of Jesus. See E. Yarnold, *They are in Earnest* (London 1982), 114. Similar joint christological declarations have been made by Pope John Paul II with the Syrian patriarch, Ignatius Zakka I, in June 1984, and with the catholicos-patriarch of the Church of the East, Mar Dinkha IV, in November 1994. This latter resolved the difficulties that had been caused by the Council of Ephesus in 431. Referring to it, Pope John Paul II said: 'This will settle and definitively put an end to more than fifteen centuries of misunderstanding that afflict our faith in Christ, true God and true man, born to the Virgin Mary by the Holy Spirit'. (*Osservatore Romano,* 10 November, 1994). These joint declarations show it is possible to have diversity of formulations even of essential doctrines within the unity of faith. This was stated clearly at the Second Vatican Council in the Decree on Ecumenism, *Unitatis Redintegratio,* n. 17: 'What has just been said about legitimate variety must also be taken to apply to the differences in theological expression of doctrine. In the study of revelation east and west have followed different methods, and taken different steps, towards their understanding and confession of God's truth... In such cases, these various theological expressions are often to be considered complementary rather than conflicting'. DEC, vol. II, 917.

[15] Decree on Ecumenism, *Unitatis Redintegratio,* n. 17.

realization can have a profoundly liberating effect. It can free us from the fear of finding heresy in every formulation that differs from our own and allow us to be open to all Christian traditions and treat them with sympathy and respect. It can reduce the danger of intolerance and intransigence. As Pope John Paul II recently wrote in his last letter to the late Armenian Patriarch-Catholicos Karekin I:

> Your Holiness, I join you in praying that the theological and spiritual heritages of our respective traditions will continue to enrich us mutually. May we be enabled to live in fidelity to St Paul's teaching: 'There is a variety of gifts, but the same Spirit; and there are varieties of service, but the same Lord; and there are all kinds of works, but it is the same God who inspires them all in every one' (1 Cor 12:4–6) ... The one condition necessary for union, as Catholicos Nerses Schnorhali declared in one of his letters, is the *truth of faith in charity.* May we come to rediscover our full communion in *the truth of faith in charity.* Your Holiness, this is my desire and the desire of the entire Catholic Church.[16]

Such openness to the richness in the different Christian traditions, expressed by the highest authorities in the Church, is refreshing and encourages everyone to go forward together in the search for 'the truth of faith in charity', with sympathy and understanding.

I think that this study of canon law in the first millennium has shown that, in fact, the Christian community has never, in all its history, had a uniform structure and a uniform discipline. There has always been diversity and, as we now realize, this has been the source of enrichment to the whole Church. Different customs have grown up in accordance with different times and cultures. This has come about under the guidance of the Holy Spirit, as is indicated in canon 1506 of the *Code of Canons for the Eastern Churches:* 'A custom of the Christian community, *in as much as it corresponds to the action of the Holy Spirit in the body of the Church,* can obtain the force of law'.[17] This declaration that customs spring up under the guidance of the Spirit would have been welcomed by one of the greatest popes of the first millennium. As has been mentioned above,[18] Gregory the Great was a champion of diversity in unity. This characteristic of Pope Gregory's pontificate has been commented on by recent writers. 'Diversity in unity was the keynote of his conception of the Christian commu-

[16] Pope John Paul II in a letter to the late Armenian Patriarch-Catholicos Karekin I, of June 29 1999. (*Osservatore Romano,* 21 July 1999, 4 [weekly edition]).

[17] 'Consuetudo communitatis christianae, quatenus actuositati Spiritus Sancti in corpore ecclesiali respondet, vim iuris obtinere potest.' That canon law grew from customs in the early Church is clearly shown in the sources that are given in the Eastern Code for this canon: canon 6 and 7 of the First Council of Nicaea; canon 2 of the First Council of Constantinople; canon 8 of the Council of Ephesus; canons 14 and 15 of the Second Council of Nicaea (787), as well as a number of canons from the Eastern Fathers.

[18] Page 226.

nity. It became the guiding thread of the pastoral principles formulated in the *Regula pastoralis*, and this it remained throughout his practice as a bishop'.[19] Gregory was a well-educated Roman aristocrat, born into a wealthy family. His father was a senator and he himself was appointed Prefect of the City of Rome when he was in his early thirties. After a few years in this post, he sold his property and devoted the proceeds to the relief of the poor and to monastic foundations. He himself withdrew to a monastery. But he was only permitted to remain there for a few years. He was recalled by Pope Pelagius II, who ordained him deacon and, in 578, sent him to Constantinople as his permanent representative at the imperial court, where he spent about seven years.[20] This was the background of the man who, in 590, was elected bishop of Rome. He would have been well aware of the different customs and usages that obtained in different places and, in particular, he would have been familiar with the diverse customs of life and liturgy of the Church in Constantinople. Such a man would have realized clearly what he was doing when he encouraged the development of local customs. Pope Gregory's attitude to diversity in unity is most evident in his famous reply to Augustine of Canterbury concerning the rite in which Mass should be celebrated in England:

> You, Brother, know the usage of the Roman Church in which you remember you were brought up: hold it very much in affection. But as far as I am concerned if you have found something more pleasing to almighty God, either in the Roman or in the Frankish or in any other Church, make a careful choice and institute in the Church of the English – which is yet new to the Faith – the best usages which you have gathered together from many Churches. For we should love things not because of the places where they are found, but places because of the good things they contain. Therefore choose from each particular Church what is godly, religious and sound, and gathering it all together as it were into a dish, place it on the table of the English for their customary diet.[21]

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[19] R. A. Markus, *Gregory the Great and his World*, 73.

[20] Gregory would have arrived in Constantinople just a year after the death of Patriarch John III Scholastikos, whose *Synagoge in 50 Titles* we discussed in Chapter One. John Scholastikos had also gone to Constantinople around 550 as the apocrisarius of the patriarch of Antioch.

[21] 'Novit fraternitas tua Romanae ecclesiae consuetudinem in qua se meminit nutritam: valde amabilem [eam] habeat. Sed mihi placet sive in Romana sive in Galliarum sive in qualibet ecclesia aliquid invenisti quod plus omnipotenti Deo possit placere sollicite eligat et in Anglorum ecclesia, quae adhuc ad fidem nova est, institutionem praecipuam quam de multis ecclesiis colligere potuit, infundat. Non enim pro locis res sed bonis rebus loca amanda sunt. Ex singulis ergo quibusque ecclesiis quae pia, quae religiosa, quae recta sunt eligat et haec quasi in vasculo collecta apud Anglorum mensam in consuetudinem depone.' This version of the text and the English translation is taken from an article on Pope Gregory's general approval of diversity in unity by Paul Meyvaert, 'Diversity within Unity, A Gregorian Theme', *Heythrop Journal* 4 (1963), 141–162.

The authenticity of this letter has been challenged by a number of scholars, but Paul Meyvart has not only satisfactorily established the authenticity of the letter, but has also convincingly shown how the attitude embodied in it fits perfectly into the context of all Gregory's writings. The reply to Augustine of Canterbury, Meyvaert argues, 'presents itself as only one particular instance of a recurrent theme which has its roots in a deep doctrinal level: diversity within unity'.[22] Throughout his pontificate Gregory consistently showed great respect for legitimate differences in conditions, places and circumstances and he thought it the duty of all in authority to adapt themselves to this diversity. This study of canon law in the first millennium has, I think, shown that, in fact, even when there was complete unity in faith, there has always been diversity of custom. The drive for uniformity of discipline and conformity of customs only became effective in the Latin Church in the second millennium.

During the first thousand years of the Church's history, the Eastern patriarchs along with their synods exercised a far-reaching autonomy. Nor did the popes ever claim to have established the rights of the patriarchs, which in fact they recognized, at least in practice. This autonomy did not exclude, on exceptional occasions, the intervention of Rome. It was not at all in opposition to the primacy of the Roman See. In matters of faith Rome was acknowledged to be of central importance. It is rather a question of canonical autonomy which is evident in the following facts. The Eastern Churches freely elected their own patriarchs and bishops. The Eastern Churches were very independent in regulating their liturgy and their canonical legislation. The Eastern Churches dealt independently with the discipline of the clergy and the laity.[23] It is not being suggested that the practice of the first thousand years should be taken as a pattern for the future. Developments have taken place in many spheres within the Church, and it must be presumed that many of these have taken place under the guidance of the Spirit. However, as we look forward to the third millennium and ask how Christians can come back into full communion with each other, it cannot but be helpful to look carefully at how Christians lived and how authority was in fact exercised in the *first* thousand years of the Church's history and see just how far it was possible to have diversity in unity.[24]

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[22] P. Meyvaert, 'Diversity within Unity, A Gregorian Theme', 146.

[23] For a fuller discussion of this question, see W. de Vries, 'The Origins of the Eastern Patriarchates and Their Relationship to the Power of the Pope. Part I', *One in Christ,* 1966, 50–69. See also De Vries's magisterial work on the Eastern patriarchates, *Rom und die Patriarchate des Ostens* (Freiburg 1963).

[24] F. Dvornik has argued that a sound basis for mutual understanding between the Eastern Churches and the Latin Church of the West would be a clearer understanding of the actual condition of the Church in the period from the fourth to the eleventh centuries. F. Dvornik, *Byzantium and the Roman Primacy* (New York 1966).

APPENDIX ONE

The Fifty Titles of the Greek *Synagoge* of John Scholastikos

What follows is a list of the fifty titles in John Scholastikos' collection, *Synagoge in Fifty Titles,* together with two lists of canons. The second column contains the canons that John Scholastikos included in his *Synagoge* and indicates the main canonical preoccupations of the early councils. The third column shows the canons that Methodios selected for his Slavonic version.[1]

Title I: On the honour that is to be given to patriarchs according to the canons; it is not permissible for any of them to take over an eparchy that belongs to another for ordinations or to live there, and eparchies that have been taken should be given back.

Canon	John Scholastikos	Methodios
AC[2] 49	x	
AC 50	x	
Constantinople 3	x	
Nicaea 6	x	
Nicaea 7	x	
Constantinople 1	x	
Constantinople 2	x	x
Constantinople 3	x	
Constantinople 5	x	
Ephesus 6	x	
Ephesus 7	x	
Chalcedon 1	x	

Title II: On the honour that should be given to Metropolitans in accordance with the canons, and concerning metropolitans who have become so by imperial

[1] For the *Synagoge* of John Scholastikos I have used the edition of Vladimir Beneševič, *Ioannis Scholastici Synagoga L Titulorum* (Munich 1937). For the *Nomokanon* of Methodios I have used the critical edition of the Slav text by J. Vasica and K. Haderka, based on the *MSS RUM* and *JAS* which has a Czek translation and a parallel Greek text, in *Magnae Moraviae Fontes Historici* (Brno 1971), vol. 4, 243-363.

[2] AC is the abbreviation for a canon from the 85 fourth-century *Apostolic Canons.*

charter; one must not take the territory belonging to another nor may one eparchy be divided into two.

Canon	John Scholastikos	Methodios
AC 34	x	x
Antioch 9	x	
Chalcedon 12	x	
Chalcedon 17	x	
Chalcedon 22		x

Title III: A bishop may not go beyond his territory of administration unasked, unless it be for supervision that has come to him, nor may he ordain outside his territory.

Canon	John Scholastikos	Methodios
AC 35	x	x
Sardica 3	x	x
Sardica 11	x	
Sardica 12	x	
Antioch 13	x	
Antioch 22	x	x

Title IV: On keeping distinct the bishop's private property from ecclesiastical property, and on his power to leave his personal property to whom he chooses.

Canon	John Scholastikos	Methodios
AC 40	x	x
Antioch 24	x	
Chalcedon 22	x	x

Title V: On the bishop's need to administer church affairs along with his priests and deacons and his obligation to choose trustworthy administrators from these and to distribute carefully what is required by those who are in need and if necessary and to provide equally for their relatives if they are in the same need as others.

Canon	John Scholastikos	Methodios
AC 38	x	x
AC41	x	x
AC59	x	
Antioch 25	x	
Chalcedon 26	x	

Title VI: A bishop who is staying away from his diocese, at court, may not ordain the person he wants to be bishop in his place, nor may he bequeath the rank of bishop to anyone.

Canon	John Scholastikos	Methodios
AC 76	x	x
Antioch 23	x	x

Title VII: On the need for the bishop to act under both the metropolitan and all in the eparchy when he is ordaining someone, either getting them to assemble together or to give their vote in writing; nor should the election of bishops be entrusted to the crowds; nor should the bishop take up residence in the country or in the villages but he should travel around regularly.

Canon	John Scholastikos	Methodios
AC 1	x	x
AC 2	x	
Nicaea 4	x	
Nicaea 6	x	
Sardica 6	x	
Antioch 19	x	
Laodicea 12	x	x
Laodicea 13	x	x
Laodicea 57	x	x

Title VIII: On the need not to put off the election of bishops for more than three months and to take the full time to examine carefully those who are called from the laity for this purpose, leading them through all the required steps.

Meanwhile the income during this period is to be looked after by the administrator of the church; and what is to be done if any of those who are looking after these matters should sell church property.

Canon	John Scholastikos	Methodios
Ancyra 15	x	x
Chalcedon 25	x	x
Sardica 10	x	

Title IX: Concerning eunuchs, who have not castrated themselves, becoming bishops: if they are worthy they should not be prevented, nor should the lame nor the one-eyed, provided they are neither dumb nor blind, because such persons would be an obstacle to the work of the church.

Canon	John Scholastikos	Methodios
AC 21	x	x
AC 77	x	
AC 78	x	x
AC 79		x

Title X: Concerning ordaining bishops or priests and not observing the liturgy, or not being accepted by the city to which they have been sent, not for any fault of theirs but for other reasons; and of those who after ordination neglect both the laity and the clergy.

Canon	John Scholastikos	Methodios
AC 36	x	x
AC 58	x	
Antioch 17	x	x
Antioch 18	x	
Sardica 18	x	

Title XI: Concerning those who have been ordained through political pressure or for money, and those who take part in such ordinations.

Canon	John Scholastikos	Methodios
AC 29	x	x
AC 30	x	x
Chalcedon 2	x	x

Title XII: The bishop should not stay away from his own city and go after other comfortable sees belonging to others, even if they are not received by the city for which they have been ordained. Nor should the clergy journey from city to city.

Canon	John Scholastikos	Methodios
AC 14	x	x
Ancyra 18	x	x
Chalcedon 5	x	x
Nicaea 15	x	
Sardica 1	x	
Sardica 2	x	
Antioch 16	x	
Antioch 21	x	

Title XIII: The bishop should not make unbecoming requests to the king nor should he visit the king without the knowledge of the metroplitan, but through his deacons he should send what is necessary for those in need. But if he really needs to approach the king he should let the metropolitan and the whole synod know by letter.

Canon	John Scholastikos	Methodios
Sardica 7	x	
Sardica 8	x	
Sardica 9	x	
Sardica 21	x	
Antioch 11	x	x

Title XIV: That bishops or any of the clergy should not accept worldly or public power, unless compelled to do so by the law; nor should they lend at

interest or give themselves as surety or go on expeditions or honours for themselves.

Canon	John Scholastikos	Methodios
AC 6	x	x
AC 20	x	
AC 44	x	x
AC 81	x	x
AC 83	x	x
Nicaea 17	x	x
Chalcedon 3	x	
Chalcedon 7	x	x
Laodicea 4	x	x

Title XV: The bishop should not, while under the influence of passionate anger, immediately banish those who have angered him or strike any of the faithful who make mistakes. Concerning what should be done by someone who has been banished or who has some private matter with his own bishop, he can go to the metropolitan if he wishes, and if the metropolitan is against him he can go to the exarch of the diocese or to the bishop of the king's council to be judged. If a cleric is in conflict with a cleric let them not take the matter away from their own bishop.

Canon	John Scholastikos	Methodios
AC 27	x	x
Sardica 14	x	
Chalcedon 9	x	x

Title XVI: On bishops who are under accusation or who are bringing accusations against anyone. Concerning someone who has been set free unjustly, should he be prevented from going to other cities. Concerning a bishop who has been removed, another bishop should not be ordained in his place for some time in case the bishop who has been removed wishes to appeal.

Canon	John Scholastikos	Methodios
AC 74	x	x

AC 75	x	x
Sardica 3	x	
Sardica 4	x	
Sardica 5	x	
Sardica 18	x	
Constantinople 6	x	
Antioch 14	x	
Antioch 15	x	x
Chalcedon 21	x	x

Title XVII: Those who have been removed from their office should not dare to take part in the liturgy, nor should they go and annoy the king with their stories, asking for a judgement from the great synod.

Canon	John Scholastikos	Methodios
AC 28	x	x
Antioch 4	x	x
Antioch 12	x	
Chalcedon 12		x

Title XVIII: It is not permitted to share with those who have been excommunicated or receive into communion those who have been removed by another bishop.

Canon	John Scholastikos	Methodios
AC 10	x	
AC 11	x	x
AC 12	x	x
AC 13	x	x
AC 16	x	x
AC 32	x	
Nicaea 5	x	
Nicaea 13	x	
Sardica 13	x	
Antioch 2	x	
Antioch 4	x	
Antioch 6	x	

Title XIX: It is not permitted for a bishop to receive into the ranks of his clergy clerics of another diocese, nor to allow a cleric to belong to the churches of two cities.

Canon	John Scholastikos	Methodios
Sardica 15	x	x
Chalcedon 10	x	x
Chalcedon 20	x	x

Title XX: That clerics must not be away from home without the knowledge of their own bishop nor should they, against his instructions, be received in another city and perform the liturgy there, but must return quickly; if they do not want to do this they must be dismissed definitively. Also concerning the provision of letters of introduction or letters of peace for those who need them.

Canon	John Scholastikos	Methodios
AC 15	x	x
AC 33	x	x
Nicaea 16	x	
Sardica 16	x	
Sardica 17	x	
Antioch 3	x	
Antioch 7	x	
Antioch 8	x	
Laodicea 41	x	x
Laodicea 42	x	x
Chalcedon 11	x	
Chalcedon 13	x	x
Chalcedon 23	x	x

Title XXI: Concerning chorbishops and clergy in the countryside and the worship that pertains to them.

Canon	John Scholastikos	Methodios
Ancyra 13	x	x
Neocaesarea 13	x	

Antioch 7	x	
Antioch 8	x	
Antioch 10	x	

Title XXII: On the need for presbyters and all the clergy to be under the direction of their bishops and to do nothing without their knowledge; nor should they form parties or sceme against them.

Canon	John Scholastikos	Methodios
AC 31	x	x
AC 39		
AC 55	x	x
Antioch 5	x	x
Laodicea 56	x	
Laodicea 57	x	
Chalcedon 8	x	
Chalcedon 18	x	

Title XXIII: Concerning deacons: they should not take the Eucharist before the bishops nor should they be the first to offer fellowship to the priests nor indeed sit in front of the priests, unless they are commanded to do so by them, and they have equal respect from their subordinates.

Canon	John Scholastikos	Methodios
AC 56	x	x
Nicaea 18	x	x
Neocaesarea 14	x	
Laodicea 20	x	x

Title XXIV: Concerning the ordination of women and their relations with men after ordination. Old men should not be ordained and women may not enter the sanctuary.

Canon	John Scholastikos	Methodios
Laodicea 11	x	

Laodicea 44	x	
Chalcedon 15	x	x
St Basil 9	x	x
St Basil 29	x	

Title XXV: On the manner of ordination and concerning those who are undeserving of ordination, and concerning those who are ordained due to deceit.

Canon	John Scholastikos	Methodios
AC 2	x	
AC 17	x	x
AC 18	x	x
AC 19	x	x
AC 61	x	x
AC 68	x	x
AC 79	x	x
Nicaea 9	x	x
Nicaea 10	x	x
Neocaesarea 9	x	
Neocaesarea 10	x	
Neocaesarea 11	x	x
Laodicea 5	x	x
Chalcedon 6	x	

Title XXVI: On singers, readers, subdeacons and exorcists, they should not take the vestments belonging to the master nor wear the horarion in the liturgy; only singers and lectors may marry in the Lord, but they should have nothing to do with heretical weddings.

Canon	John Scholastikos	Methodios
AC 26	x	
Laodicea 10	x	
Laodicea 15	x	
Laodicea 21	x	x
Laodicea 23	x	
Laodicea 25	x	x
Laodicea 26	x	x

Laodicea 31	x	
Laodicea 43	x	
Chalcedon 14	x	x
St Basil 54	x	

Title XXVII: A priest may not send away his wife on the pretext of piety, nor may the unmarried marry after ordination, unless the person being ordained had testified beforehand that he was going to get married.

Canon	John Scholastikos	Methodios
AC 5	x	x
Ancyra 10	x	
Neocaesarea 1	x	x
St Basil 12	x	x
St Basil 17	x	
St Basil 36	x	
St Basil 55	x	

Title XXVIII: A priest should not have women in his house except those who are above suspicion, nor should he attend the weddings of those who marry for the second time, nor should he watch spectacles at weddings and it is certainly not a Christian thing to dance at weddings.

Canon	John Scholastikos	Methodios
AC 55	x	
AC 56	x	
Nicaea 3	x	x
Neocaesarea 7	x	x
Laodicea 53	x	x
Laodicea 54	x	x

Title XXIX: It is not permissible for bishop, cleric or even layman to abhor the eating of meat or marriage in the Lord; nor should he be arrogant with those who behave correctly in these matters.

Canon	John Scholastikos	Methodios
AC 51	x	x
AC 53	x	x
AC 63	x	x
Ancyra 14	x	x
Gangra 1	x	x
Gangra 2	x	x
Gangra 4	x	
Gangra 9	x	
Gangra 10	x	
Gangra 12	x	
Gangra 14	x	
St Basil 13	x	

Title XXX: No bishop or cleric or even layman should be found dicing or drinking in taverns; nor should those invited to a feast take away their portions, nor should anyone look down on those who call the brethren to a feast; nor should any one deceive brothers who are infirm.

Canon	John Scholastikos	Methodios
AC 42	x	x
AC 43	x	x
AC 54	x	x
AC 57	x	x
Gangra 11	x	x
Gangra 13	x	
Laodicea 24	x	x
Laodicea 27	x	
Laodicea 55	x	

Title XXXI: No bishop, priest, cleric nor even a layman should break the fasts laid down by the church, nor should they make memorials for the saints or bread for the offering during the forty days (of Lent) except only on Sundays and Saturdays, nor should weddings or birthday feasts be celebrated during the forty days.

Canon	John Scholastikos	Methodios
AC 69	x	x
Gangra 19	x	x
Laodicea 49	x	x
Laodicea 50	x	x
Laodicea 51	x	x
Laodicea 52	x	x

Title XXXII: Concerning those who adorn themselves without discretion and who fast on Sundays and Saturdays, and, puffed up with pride and on the pretext of piety towards God, keep away from their parents or their children or their relations or who deprecate the memorials of the saints or the Eucharist in church.

Canon	John Scholastikos	Methodios
AC 64	x	x
Gangra 11	x	
Gangra 12	x	
Gangra 13	x	x
Gangra 15	x	x
Gangra 16	x	x
Gangra 17	x	x
St Basil 20	x	x
Gangra 18	x	x
Gangra 20	x	

Title XXXIII: Hermits must be subject to their bishops and they should not leave the places in which they have been established nor should they set up monasteries against the will of their own bishop; nor should places that have been consecrated become residences again, nor should a slave be received into the ranks of the clergy or into a monastery against the will of his master.

Canon	John Scholastikos	Methodios
AC 82	x	x
Gangra 3	x	x
Chalcedon 4	x	x

Chalcedon 24	x	x

Title XXXIV: On monks and monasteries who set aside the religious habit.

Canon	John Scholastikos	Methodios
Nicaea 12	x	x
Ancyra 19	x	x
Chalcedon 16	x	x
St Basil 2	x	x
St Basil 3	x	x
St Basil 45	x	x

Title XXXV: On catechumens who transgress and go against the commitment they made before becoming catechumens.

Canon	John Scholastikos	Methodios
Nicaea 14	x	x
Neocaesarea 5	x	x
St Basil 4	x	

Title XXXVI: Those who have recently been baptized should not at once be allowed to be priests. Whether a catechumen who is pregnant is to be baptized. It is necessary that those who have been baptized in illness should learn the faith after their baptism; and concerning the orthodox faith which it is necessary for the baptized person to learn thoroughly.

Canon	John Scholastikos	Methodios
AC 80	x	x
AC 47	x	
AC 49	x	
AC 50	x	
AC 51	x	
Nicaea 2	x	
Neocaesarea 6	x	x
Neocaesarea 12	x	x

Laodicea 3	x	x
Laodicea 45	x	x
Laodicea 46	x	x
Laodicea 47	x	x
Laodicea 48	x	x
Constantinople 5	x	

Title XXXVII: Concerning bishops who have been ordained irregularly; and on heretics and those who are married to heretics; one must never fast or pray or keep festivals with heretics or Jews, nor should one accept blessings from them or enter their synagogues, or offer in them olive oil or any kind of offering whatsoever.

Canon	John Scholastikos	Methodios
AC 45	x	x
AC 46	x	x
AC 65	x	x
AC 70	x	x
AC 71	x	x
Laodicea 6	x	x
Laodicea 9	x	
Laodicea 29	x	
Laodicea 32	x	x
Laodicea 33	x	
Laodicea 34	x	x
Laodicea 35	x	x
Laodicea 37	x	
Laodicea 38	x	x
Laodicea 39	x	
Laodicea 58	x	
Constantinople 4	x	x
Ephesus 1	x	x
Ephesus 2	x	
Ephesus 4	x	x
Ephesus 5	x	

Title XXXVIII: Concerning those who turn away from heresy and come into the Catholic Church; and on receiving those who have been expelled by heretics and those who have turned away from sin.

Canon	John Scholastikos	Methodios
AC 52	x	x
Nicaea 8	x	x
Nicaea 19	x	
Sardica 19	x	
Sardica 20	x	
Laodicea 2	x	x
Laodicea 7	x	
Laodicea 8	x	x
Constantinople 1	x	
Ephesus 3	x	x
Ephesus 7	x	
St Basil 32	x	

Title XXXIX: Concerning those who turn away from those who offered incense or ate food sacrificed to idols of necessity or because they were threatened with punishment, or by reason of their household situation; and concerning those who offered incense before baptism, whether it is necessary to examine them about this after baptism; concerning those who go in for astrology or oracles or witchcraft, and of those who wear or make written phylacteries.

Canon	John Scholastikos	Methodios
AC 62	x	x
Nicaea 11	x	x
Ancyra 1	x	
Ancyra 2	x	
Ancyra 3	x	
Ancyra 4	x	
Ancyra 5	x	
Ancyra 6	x	
Ancyra 7	x	
Ancyra 8	x	
Ancyra 9	x	
Ancyra 12	x	x
Ancyra 24	x	x
Laodicea 36	x	x
St Basil 67	x	

St Basil 30	x	
St Basil 58	x	x
St Basil 57	x	x
St Basil 66	x	
St Basil 50	x	x

Title XL: Concerning murder, voluntary and involuntary, and those who mutilate themselves; of abortion and child murder and those who confess these crimes.

Canon	John Scholastikos	Methodios
AC 22	x	x
AC 23	x	
AC 24	x	x
AC 66	x	x
Nicaea 1	x	
Ancyra 21	x	x
Ancyra 22	x	
Ancyra 23	x	
Ancyra 25	x	
St Basil 18	x	
St Basil 28	x	
St Basil 37	x	x
St Basil 39	x	
St Basil 40	x	
St Basil 41	x	x
St Basil 42	x	x
St Basil 56	x	

Title XLI: On those who turn away from adultery and of those who separate without reason and go to live with others; and of the woman who has gone to live with another man before she knows of the death of her absent husband.

Canon	John Scholastikos	Methodios
AC 16		x
AC 48	x	x
AC 67		x
Ancyra 20	x	x

Neocaesarea 8	x	x
St Basil 16	x	
St Basil 19	x	
St Basil 20	x	
St Basil 21	x	
St Basil 24	x	
St Basil 33	x	x
St Basil 43	x	x
St Basil 62	x	x

Title XLII: Concerning punishment of those who are guilty of prostitution and adultery; and concerning those who compel women to live with them, or carry them off against their will; of maidens and slaves who give themselves to men against the will of their master.

Canon	John Scholastikos	Methodios
AC 67	x	
Ancyra 11	x	x
Nicaea 13	x	
Chalcedon 27	x	x
St Basil 5	x	
St Basil 6	x	
St Basil 10	x	
St Basil 11	x	x
St Basil 15	x	x
St Basil 22	x	
St Basil 23	x	x
St Basil 25	x	
St Basil 27	x	x
St Basil 31	x	
St Basil 34	x	x
St Basil 44	x	

Title XLIII: Of those who freely marry a second time and of those who enter into numerous marriages, and of those who resolve to sin but fail to carry out their resolve; and concerning the prohibition for a man to bathe along with women.

Canon	John Scholastikos	Methodios
Neocaesarea 3	x	x
Neocaesarea 4	x	x
Laodicea 1	x	x
Laodicea 30	x	x
St Basil 26	x	
St Basil 35	x	x
St Basil 38	x	
St Basil 65	x	x

Title XLIV: On those who marry two brothers or two sisters; on those who take in marriage their own sisters or their stepmothers; and of those who commit shameful acts with boys or with animals.

Canon	John Scholastikos	Methodios
Ancyra 16	x	x
Ancyra 17	x	
Neocaesarea 2	x	x
St Basil 8	x	
St Basil 47	x	
St Basil 48	x	x
St Basil 52	x	x
St Basil 53	x	
St Basil 60	x	x
St Basil 61	x	x
St Basil 62	x	
St Basil 64	x	x
St Basil 63	x	x

Title XLV: Concerning thieves, those who break open graves, and perjurers; of clerics who swear falsely; and of those who rashly swear an oath to someone's harm.

Canon	John Scholastikos	Methodios
AC 25 , St Basil 1	x	x

St Basil 14		
St Basil 46	x	x
St Basil 49	x	x
St Basil 51	x	x
St Basil 67	x	x

Title XLVI: It is not permitted to remove or appropriate anything that belongs to the church, nor to remove offerings apart from the person who has been charged to make these decisions. Nor should sacred things be sent to other parishes; and concerning who should take the offerings to the altar.

Canon	John Scholastikos	Methodios
AC 3	x	x
AC 4	x	x
AC 72	x	x
AC 73	x	x
Gangra 7	x	x
Gangra 8	x	x
Laodicea 14	x	

Title XLVII: Concerning those who do not come to church on three consecutive Sundays; those who do not remain until after communion; concerning clerics who do not take part in the anaphora when it is celebrated, and those who despise the church and the synaxis; on those who use the revenue for buildings that are not suitable and on those who hold drinking parties in church.

Canon	John Scholastikos	Methodios
AC 8	x	x
AC 9	x	x
Sardica 11	x	x
Gangra 5	x	x
Gangra 6	x	x
Gangra 20	x	
Antioch 2	x	x
Laodicea 28	x	
Laodicea 58	x	x

Title XLVIII: On those who disobey church laws; the priests should bear witness against those who disobey the laws, and decide the penance in accordance with the zeal of the penitent.

Canon	John Scholastikos	Methodios
Sardica 1	x	
Ephesus 6	x	x
Chalcedon 1	x	x
St Basil 59	x	
St Basil 68	x	x

Title XLIX: On how often in each eparchy there should be a synod and when it should be; all bishops must attend the synod unless prevented by necessity.

Canon	John Scholastikos	Methodios
AC 37	x	x
Nicaea 5	x	
Antioch 20	x	
Laodicea 40	x	
Chalcedon 19	x	x

Title L: Concerning the canon of prayers and psalms and readings, and [the that] on Sundays and during the period of Pentecost, one should not kneel at prayers. Also concerning the time of Easter and the books that have been declared canonical [i.e. the books that form the Old Testament and the New Testament].

Canon	John Scholastikos	Methodios
AC 7	x	x
AC 60	x	x
Nicaea 20	x	x
Antioch 1	x	x
Laodicea 16	x	
Laodicea 17	x	x
Laodicea 18	x	x
Laodicea 19	x	

Laodicea 40		x
Laodicea 59	x	x
AC 84	x	
AC 85	x	x

APPENDIX TWO

The Nomokanon in XIV Titles

There were two parts to this canonical collection: in the first part there was the systematic collection in fourteen titles, containing the imperial constitutions, the *nomoi*; in the second part there was the chronological collection of all the canons, as listed in the second canon of the Council *in Trullo*, with the addition of the canons that had been promulgated since Trullo. Because only *references* to the canons were given in the first part, it was essential to have access to the chronological collection of canons as well (as listed in Appendix Three).

Title I: On theology and the orthodox faith (38 chapters).
Title II: On the building and consecration of churches (3 chapters).
Title III: On prayers and psalms; on the duties and vestments of readers, cantors and ministers (22 chapters).
Title IV: On the catechumenate and holy baptism (17 chapters).
Title V: On those who treat the church with disrespect, and on those who eat in church (3 chapters).
Title VI: On the offering of fruits (3 chapters).
Title VII: On Lent, Easter and Pentecost; on Sundays and Saturdays and on genuflection (5 chapters).
Title VIII: On parishes and on the behaviour of bishops and clerics; on pilgrimages and annual synods; on doctrine and letters of peace; and on the honour to be shown each other (19 chapters).
Title IX: On sins and judgments of bishops and clerics; on excommunication and deposition; on penance and absolution of sins (39 chapters).
Title X: On the administration of church property and on the private property of the bishop (8 chapters).
Title XI: On monasteries and monks (16 chapters).
Title XII: On heretics, Jews and gentiles (18 chapters).
Title XIII: On the laity [duties, marriage, and other matters] (41 chapters).
Title XIV: On matters pertaining to all in common (7 chapters).

APPENDIX THREE

The Chronological Collection of Conciliar Canons[1]

1 **85 Canones Apostolorum**

2 **Conciliar canons:**

Nicaea I (325)	20 canons
Constantinople I (381)	7 canons
Ephesus (430)	8 canons
Chalcedon (451)	30 canons
Trullo (91)	102 canons
Nicaea II (787)	22 canons
Ancyra (314)	25 canons
Neocaesarea (c.324)	15 canons
Antioch (c.330)	25 canons
Gangra (341)	21 canons
Sardica (343)	20 canons
Laodicea (c.345/365)	60 canons
Constantinople (394)	1 canon
Carthage (419)	135 canons
Constantinople I–II (861)	17 canons
Constantinople (879/80)	3 canons

3 **Canons of the Holy Fathers**

St Dionysius of Alexandria	(195–264)
St Peter of Alexandria	(300–311)
St Gregory Thaumaturgus	(213–270)
St Athanasius	(295–373)
St Basil (93 cc)	(330–379)
St Gregory of Nyssa	(335–395)
St Timothy of Alexandria	(375–385)
Theophilus of Alexandria	(385–412)

[1] The collection that was commented on by T. Balsamon. See G. A. Rhalles – M. Potles, Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων (Athens 1852–1859), vols II–IV; J. P. Migne, *Patrologia Graeca*, vols 137 and 138.

St Cyril of Alexandria	(375–444)
St Gregory Nazianzen	(329–390)
St Amphilochius	(340–404)
Gennadius Patriarch of Constantinople	(458–475)
Tarasius Patriarch of Constantinople	(784–806)

APPENDIX FOUR

Gratian's *Concordia Discordantium Canonum*[1]

Part I 101 Distinctions: On the Ministry

DD 1–20	On the nature and sources of law
DD 21–80	On the qualities required in ordinands
DD 81–101	On the qualities of the bishop
	On the upkeep of the clergy
	On the care of the poor
	The relationship between civil and church authority

Part II 36 Causae: On Church Affairs

C. 1 On Simony (7 qq)
C. 2 On bringing accusations to court (8 qq)
C. 3 On Spoliation (11 qq)
C. 4 On plaintiffs and witnesses (4qq)
C. 5 On summonses to appear in court (6 qq)
C. 6 On bringing accusations against bishops (6 qq)
C. 7 On the concurrence of bishops in one see (2 qq)
C. 8 On episcopal succession (5 qq)
C. 9 On the power of a bishop who has been excommunicated (3 qq)
C. 10 On the bishop's power over temporal goods (3 qq)
C. 11 On the forum for clerics (3 qq)
C. 12–13 On temporal goods (7 qq)
C. 14 On the rights of the clergy (7 qq)
C. 15 On procedural law (8 qq)
C. 16–20 On the law for monks and religious (20 qq)
C. 21 Concerning the secular clergy (5 qq)
C. 22 On oaths and perjury (5 qq)
C. 23 On coercive power and the rights of war (8 qq)
C. 24 On heresy and excommunication (3 qq)
C. 25 On privileges (2qq)
C. 26 On foretelling the future (7 qq)
C. 27–36 On marriage (42 qq) [C. 33, q.3: 7 distinctions de penitentia].

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[1] There is no critical edition of Gratian's *Decretum*. I have used the edition by Emil Friedberg, *Corpus Iuris Canonici*, vol. I (Leipzig 1879).

Part III 5 Distinctions on the Sacraments
D. 1 On the consecration of churches
D. 2 On the sacrament of the Eucharist
D. 3 On feast days
D. 4 On baptism
D. 5 On the Holy Spirit, on confirmation and on fasting.

Bibliography

I. Sources:

A. *Canonical Collections used:*

Dionysius Exiguus:

C. Justel. *Codex canonum ecclesiasticorum Dionysii Exigui* (Paris 1628 and 1648) reproduced by G. Voellius and H. Justel, *Bibliotecha iuris canonici veteris* 1 (Paris 1661), 101–248; PL, vol. 67, 137–316.

John Scholastikos:

Vladimirus Beneševič (editor), *Ioannis Scholastici Synagoga L Titulorum* (Munich 1937).

The Nomokanon in XIV Titles:

G. A. Rhalles – M. Potles, Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων, (Athens 1852–1859), vol. I, 1–335.

J. B. Pitra, *Juris ecclesiastici Graecorum historia et monumenta* (Rome 1864–1868), vol. II, 433–640; PG, vol. 104, 975ff. (with the commentary of T. Balsamon).

The False Decretals:

J. Merlin (editor), *Isidori Mercatoris Decretalium Collectio,* in PL, vol. 130, 1–1178.

Paul Hinschius, *Decretales Pseudoisidorianae et Capitula Angilramni* (Leipzig 1863).

St Methodios:

The Nomokanon of Methodius, in *Magnae Moraviae Fontes Historici* (Prague – Brno 1971), 243–363.

Gratian:

E. Friedberg (editor), *Concordia Discordantium Canonum*, in *Corpus Iuris Canonici,* vol. I (Leipzig 1879).

Theodore Balsamon:

Commentary on the Chronological Collection of Canons:

G. A. Rhalles – M. Potles, Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων (Athens 1852–1859), vols II –IV.

J. P. Migne, *Patrologia Graeca,* vols 137 and 138.

Bar Hebraeus:

Paul Bedjan, *Le Livre des Directions ou Nomokanon de Bar Hebraeus* (Paris1898).

Arthur Vööbus, *Syrische Kanonessammlungen, I: Westsyrische Originalurkunden,* 1/B, *Corpus Scriptorum Christianorum Orientalium* 317 (Louvain 1970), 499–552.

A. Mai, *Ecclesiae Antiochenae Syrorum Nomokanon a Gregorio Abulpharagio Bar Hebraeo compositus et a Iosepho Aloysio Assemano in Latinam linguam conversus, Scriptorum Veterum Nova Collectio* (Rome 1838), vol. X, Part II, 3–268.

Ebedjesus:

A. Mai (editor), *Ebediesu Metropolitae Sobae et Armeniae Collectio Synodicorum Canonum ex Chaldaicis Bibliotechae Vaticanae codicibus sumpta et in Latinam linguam translata ab Aloysio Assemano,* in *Scriptorum veterum nova collectio,* vol. X (Rome 1838), Syriac text: 169–360; Latin translation: 3–168.

J.-M. Vosté, *Ordo Iudiciorum Ecclesiasticorum d'Ebedjésus de Nisibe, Codificazione Canonica Orientale, Fonti,* Serie II, fascicolo XV (Vatican 1940).

B. *General Collections of Canons:*

Joannou, P.-P. (editor), *Discipline Générale Antique (IIe – IXe s.)*, vol. I, *Les canons des conciles*; vol. II, *Les canons des Pères Grecs* (Rome 1962).

Tanner, Norman P. (editor), *Decrees of the Ecumenical Councils* (London – Washington 1990).

Percival, H. R. (editor), *The Nicene and Post-Nicene Fathers. Second Series, Volume XIV. The Seven Ecumenical Councils of the Undivided Church. Their Canons and Dogmatic Decrees together with the Canons of all the Local Synods which have received Ecumenical Acceptance* (Edinburgh – Michigan 1991).

Turner, C. H. (editor), *Ecclesiae Occidentalis Monumenta Iuris Antiquissimi. Canonum et Conciliorum Graecorum interpretationes Latinae,* 2 vols (Oxford 1899–1939).

II. Other books and articles consulted:

Alexakis, A., *Codex Parisinus Graecus 1115 and Its Archetype,* Dumbarton Oaks Studies XXXIV (1996).

Alger of Liège, *Liber de Misericordia et Iustitia, Patrologia Latina,* vol. 180, cols 857ff.

Alivizatos, C. H., *The Holy Canons* (Athens 1949).

Angold, M. *Church and Society in Byzantium under the Comneni 1081–1261* (Cambridge 1995).

Assfalg, J. and Krüger, P., *Petit Dictionnaire de l'Orient Chrétien* (Turnhout 1991).

Barnard, L. W., *The Council of Sardica 343 AD* (Sofia 1983).
Barry, C. J. (editor), *Readings in Church History* (Collegeville 1985).
Barstow, Anne Llewellyn, *Married Priests and the Reforming Papacy: the Eleventh-Century Debate. Texts and Studies in Religion.* vol. 12 (New York 1982).
Bartold, V. V., *Four Studies in the History of Central Asia* (Leiden 1956–58).
Baumstark, Anton, *Geschichte der syrischen Literatur* (Bonn 1922).
Beaudette, Paul, '"In the World but not of It": Clerical Celibacy as a Symbol of the Medieval Church,' in *Medieval Purity and Piety. Essays on Medieval Clerical Celibacy and Religious Reform*, edited by Michael Frassetto (New York and London 1998), 23–46.
Beck, Hans Georg 'The Byzantine Church in the Age of Photius,' *Handbook of Church History,* Volume III, *The Church in the Age of Feudalism* (London 1969).
Bedjan Paul, *Le Livre des Directions ou Nomokanon de Bar Hebraeus* (Paris 1898).
Benson, R., 'Plenitudo potestatis, Evolution of a formula', *Studia Gratiana* 14 (1967), 195–217.
Berman, H. J., *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard and London 1983).
Bieler, L. (editor), *The Irish Penitentials* (Dublin 1963).
Blondel, David, *Pseudo-Isidorus et Turrianus Vapulantes* (Paris 1624).
Blumenthal, Uta-Renate, *The Investiture Controversy. Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia 1988).
Boojamra, J. L. (1982) 'The Photian Synod of 878–879 and the Papal Commonitorium (879)', *Byzantine Studies* (1982), 1–23.
Bowman, J. and Thomson, J. A., 'The Monastery-Church of Bar Hebraeus at Maragheh in West Azerbaijan', *Abr-Nahrain* 7 (1968), 35–61.
Braun, O., *Das Buch der Synhodos* (Stuttgart – Vienna 1900).
Brock, Sebastian (1981) 'The conversations with the Syrian Orthodox under Justinian (532)', *Orientalia Christiana Periodica* 47 (1981), 87–121.
—, 'L'Église de l'Orient dans l'Empire sassanide jusqu'au VIe siècle et son absence aux conciles de l'Émpire romain', *La Tradition Syriaque* (Paris 1995), 25–43.
—, 'The "Nestorian Church": a lamentable misnomer', *Bulletin of the John Rylands Library* 78 (1996), 22–35.
Brooke, Christopher, *The Medieval Idea of Marriage* (Oxford 1989).
Brown, Peter, *The Rise of Western Christendom* (Oxford 1996).
Brown, Ralph, *Marriage Annulment in the Catholic Church* (London 1990).
Browning, Robert, *Justinian and Theodora* (revised edition) (London 1987).
Brundage, James A., *Law, Sex and Christian Society in Medieval Europe* (Chicago and London 1987).

—, 'Implied Consent to Intercourse,' A. E. Laiou (editor), *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies* (Washington 1993), 248–249.
—, *Medieval Canon Law* (London and New York 1995).
Buckley, Timothy, *What Binds marriage?* (London 1997).
Callam, Daniel, 'Clerical Continence in the Fourth Century: Three Papal Decretals', *Theological Studies* 41 (1980), 3–50.
Cameron, Averil, *Procopius and the Sixth century* (London 1985).
Cereti, G., 'The Reconciliation of Remarried Divorcees According to Canon 8 of the Council of Nicaea', J. H. Provost and E. K. Walf (editors), *Ius Sequitur Vitam. Law Follows Life* (Louvain 1991), 193–207.
Chabot, Jean-Baptiste, *Synodicon orientale ou Recueil de Synodes Nestoriens* (Paris 1902).
Chadwick, H., *Boethius. The Consolations of Music, Logic, Theology and Philosophy* (Oxford 1964).
Chodorow, S., 'Ideology and Canon Law in the Crisis of 1111', *Proceedings of the Fourth International Congress of the Medieval Canon Law* (Vatican 1976), 55–80.
Cholij, Roman, *Clerical Celibacy in East and West* (Leominster 1990).
Cochini, C., *Apostolic Origins of Priestly Celibacy* (San Francisco 1990).
Coleman-Norton, P. R, *Roman State and Christian Church, III* (London 1966).
Colless, Brian E. (1988) 'The Mysticism of Bar Hebraeus', *Orientalia Christiana Periodica,* vol. 54 (1988), 153–173.
Congar, Yves, *After Nine Hundred Years: The Background to the Schism between the Eastern and Western Churches* (New York 1959).
—, *Power and Poverty in the Church* (London 1964).
—, *L'Ecclésiologie du haut Moyen Age* (Paris 1968).
—, *L'Église de Saint Augustin à l'époque moderne* (Paris 1970).
Cowdrey, H. E. J., *Pope Gregory VII* (Oxford 1998).
Cross, F. L., 'History and Fiction in the African Canons', *Journal of Theological Studies*, NS 12 (1961) 227–247.
Crouzel, Henri, *L'Église primitive face au divorce au cinquième siècle* (Paris 1971).
— 'Une nouvelle étude sur les origines du célibat ecclésiastique,' *Bulletin de Litterature Ecclésiastique* 83 (1982) 293–297.
Cushing, Kathleen G., *Papacy and Law in the Gregorian Revolution. The Canonistic Work of Anselm of Lucca* (Oxford 1998).
Dagron, G., 'Le caractère sacerdotal de la royauté d'après les commentaires canoniques du XIIe siècle', N. Oikonomides (editor), *Byzantium in the 12th Century (*Athens 1991), 165–178.
Dagron, Gilbert, *Empereur et prêtre. Étude sur le 'césaropapisme' byzantin* (Paris 1996).

Daley, Brian, 'Position and Patronage in the Early Church: the Original Meaning of the *Primacy of Honour*', JTS, 44 (1993) 529–553.
Dauvillier, J., de Clercq, C., *Le mariage en droit canonique oriental* (Paris 1936).
—, 'Chaldéen (Droit),' in DDC, vol. III, (Paris 1942).
— 'Les provinces chaldéennes de l'extérieur au Moyen-Age', *Mélanges F. Cavallera* (Toulouse 1948) 260–316.
Davis, R., *The Book of Pontiffs* (Liverpool 1989).
— *The Lives of Eighth-Century Popes (715–817)* (Liverpool 1992).
— *The Lives of Ninth-Century Popes (817–891)* (Liverpool 1995).
De Vries, W., *Rom und die Patriarchate des Ostens* (Freiburg 1963).
— 'The Origins of the Eastern Patriarchates and Their Relationship to the Power of the Pope. Part I', *One in Christ* (1966), 50–69.
— *Orient et Occident. Les structures ecclésiales vues dans l'histoire des sept premiers conciles oecuméniques* (Paris 1974).
De Clercq, C., 'Nomokanon', DDC, vol. 2, 1171–1177.
De Marini Avonzo, F., 'Secular and Clerical Culture in Dionysius Exiguus' Rome', S. Kuttner and K. Pennington (editors), *Proceedings of the Sixth International Congress of Medieval Canon Law* (Vatican 1985), 83–92.
Dewey, H. W. and A. M. Kleimola, *Zakon Sudnij Liudem* (Court Law for the People) (Ann Arbor, Michigan 1977).
Duby, Georges, *The Knight the Lady and the Priest* (London 1983).
Duffy, Eamon, *Saints and Sinners. A History of the Popes* (Yale 1997).
Dura, N., 'Denys Exiguus (465–550): Précisions et correctifs concernants sa vie et son oeuvre', R. Coppola (editor), *Proceedings of the International Congress: The Meeting of Eastern and Western Canons* (Bari 1995), 86–100.
Dvornik, F., *Les Légendes de Constantin et de Méthode vues de Byzance* (Prague 1933, second edition 1969).
—, *The Photian Schism* (Cambridge 1948).
—, *The Idea of Apostolicity in Byzantium and the Legend of the Apostle Andrew* (Harvard 1958).
—, *Byzantium and the Roman Primacy* (New York 1966).
—, *Byzantine Missions among the Slavs. SS. Cyril-Constantine and Methodius* (New Jersey 1970).
Erickson, J., 'The Collection in Three Books and Gratian's Decretum', *BMCL* 2(1972), 67–75.
Every, G., *The Byzantine Patriarchate, 451–1204.* 2nd edition revised (London 1962).
Ferme, Brian E., *Introduzione alla Storia del Diritto Canonico. I. Il Diritto Antico fino al Decreto di Graziano* (Rome 1998).
Fiey, Jean-Maurice, 'L'expansion de l'Église de Perse', *La Tradition Syriaque* (Paris 1995), 149–157.

Fine, J. V. A., *The Early Medieval Balkans. A Critical Survey from the Sixth to the late Twelfth Century* (Ann Arbor 1983).

Fournier, P. and Le Bras, G., *Histoire des collections canoniques en occident depuis les Fausses Décrétales jusqu'au Décret de Gratien* (Paris 1931–1932).

Fransen, Piet, 'Divorce on the grounds of adultery in the Council of Trent (1563)', *Concilium,* vol. 5 (1970), no. 6, 89–100.

Fuhrman, Horst, 'Edictum Domini Constantini Imepratoris', in *Monumenta Germaniae Historica. Fontes iuris Germanici antiqui,* X, (1968) 278–80.

—, 'False Decretals (Pseudo-Isidorean Forgeries)', NCE, vol. 5, 820–824.

—, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen von ihren Auftauchen bis in die neuere Zeit. Monumenta Germaniae Historica,* 24; 3 volumes (Stuttgart 1973–1974).

Gallagher, C., *Canon Law and the Christian Community* (Rome 1978).

—, 'Canon Law and Ecclesiology I', *The Way* (Jan. 1982), 50–60.

—, 'Gratian and Theodore Balsamon: Two Twelfth-Century Canonistic Methods Compared', N. Oikonomides (editor), *Byzantium in the 12th Century*, (Athens 1991), 61–89.

—, 'Sacri Canones nel Decretum di Graziano', *Ius in Vita et Missione Ecclesiae* (Vatican1994), 762–771.

Galvin, John P., 'Papal Primacy in Contemporary Roman Catholic Theology',*Theological Studies* 47 (1986), 653–657.

Gaudemet, Jean, *Les sources du droit de l'Église en occident du IIe au VIIe siècle* (Paris 1985).

—, 'Les sources du Décret de Gratien', RDC, 48 (1998), 247–261.

Geanakoplos, D. J., *Byzantine East and Latin West* (Oxford 1966).

Germovnik, F., *Index Biblicus ad Decretum Gratiani* (Illinois 1971).

Gibbon, Edward, *The History of the Decline and Fall of the Roman Empire* (London 1901).

Gilchrist, J., 'Proprietary Churches', NCE, vol. 11, 874.

Gilmont, J. F., 'Flacius Illyricus', DHGE, vol. 17, 311–316.

Glorie, F. (editor), 'Dionysii Exigui Praefationes Latinae Genuinae in variis suis translationibus ex Graeco,' *Scriptores 'Illyrici' Minores* (Turnhout 1972), 27–81.

Grillmeier, A., *Christ in Christian Tradition*, volumes 1 and 2 (revised edition) (London 1975).

Grivec, F, *Konstantin und Methodius. Lehrer der Slaven* (Wiesbaden 1960).

Grumel, V., 'Les Réponses canoniques à Marc d'Alexandre, leur caractère officiel, leur double rédaction', *Échos d'Orient* 38 (1939), 321–333.

Gryson, Roger, *Les origines du célibat ecclésiastique du premier au septième siècle* (Gembloux 1970).

Haugh, Richard, *Photius and the Carolingians. The Trinitarian Controversy* (Massachussetts 1975).

Heath, R. G., 'The Western Schism of the Franks and the *Filioque*', *Journal of Ecclesiastical History,* vol. 23 (1972), 97–113.

Hergenröther, J. A. G., *Photius, Patriarch von Konstantinopel. Sein Leben, seine Schriften und das griechische Schisma,* 3 vols (Regensburg 1867–69).

Herman, E., 'Ius Iustinianeum qua ratione conservatum sit in iure ecclesiastico orientali', *Acta Congressus Iuridici Internationalis,* vol. II (Rome 1935), 145–156.

—, 'Célibat des clercs (droit oriental)', DDC, vol. III, cols 153–154.

—, 'The Secular Church', *The Cambridge Medieval History,* vol. IV, Part II, Chapter XXIII, (Cambridge 1967), 105–133.

Hess, H., *The Canons of the Council of Sardica 343 AD* (Oxford 1958).

Holdsworth, W., *Some Makers of English Law* (Cambridge 1938).

Honoré, Tony, *Tribonian* (London 1978).

Hookham, Hilda, *Tamburlane, the Conqueror* (London 1962).

Howard, G., *Teaching of Addai* (California 1981).

Huc, L'Abbé, *Christianity in China, Tartary and Tibet,* vol. I (New York 1857).

L'Huillier, Peter, *The Church of the Ancient Councils* (New York 1996).

Hussey, J. M., *The Orthodox Church in the Byzantine Empire* (Oxford 1986).

Jasper, D. and Fuhrmann, H., *Papal Letters in the Early Middle Ages* (Washington 2001).

John Paul II, *Euntes in mundum,* Apostolic Letter on the occasion of the millenium of the conversion of Russia to Christianity, *AAS* 80 (1988), 935–956.

—, *Slavorum apostoli,* Encyclical Letter on Saints Cyril and Methodius, *AAS* 77 (1985), 779–813.

—, *Ut unum sint,* Encyclical Letter on ecumenism, *AAS* 87 (1995) 921-982.

Jolowicz, H., *Historical Introduction to the Study of Roman Law,* second edition (London 1952).

Kantorowicz, H., 'Note on the Development of the Gloss on the Justinian and the Canon Law', Beryl Smalley (editor), *The Study of the Bible in the Middle Ages* (Oxford 1951), 52–55.

Karlin-Hayter, Patricia, 'Indissolubility and the "greater evil". Three thirteenth-century divorce cases', R. Morris (editor), *Church and People in Byzantium* (Birmingham 1987), 87–105.

Kasper, Walter, *Theology of Christian Marriage* (London 1980).

Kaüfhold, H., 'Römisch-Byzantinisches Recht in den Kirchen Syrischer Tradition', R. Coppola (editor), *Incontro fra Canoni d'Oriente e d'Occidente* (Bari 1994), vol. I, 133–164.

Kéry, Lotte, *Canonical Collections of the Early Middle Ages (ca. 400–1140),* (Washington 2000).

Kochuparambil, X., *Evangelization in India* (Kerala 1993).
Krikorian, Messrob K., '*Ius Graeco-Romanum* and Canon Rules in the Tradition of the Armenian Church', R. Coppola (editor), *Incontro fra Canoni d'Oriente e d'Occidente* (Bari 1994), vol. I, 165–191.
Kunkel, W., *An Introduction to Roman Legal and Constitutional History* (Oxford 1966).
Kuttner, Stephan, 'Gratian the Father of the Science of Canon Law', *The Jurist* 1 (1941), 2–19.
—, *Harmony from Dissonance. An Interpretation of Medieval Canon Law* (Pennsylvania 1960).
—, 'Gratien', DHGE, vol. 21, col. 1237.
—, 'Research on Gratian: Acta and Agenda', *Proceedings of the Seventh International Congress of Medieval Canon Law* (Vatican 1988), 4–26.
Laeuchli, S., *Power and Sexuality: The Emergence of Canon Law at the Synod of Elvira* (Philadelphia 1972).
Lampe, G. W. H., *A Patristic Greek Lexicon* (Oxford 1961).
Landau, Peter, 'Gratien,' *Theologische Realenzyklopädie,* vol. 14 (1985), 129–130.
—, 'Burchard de Worms et Gratien: À propos des sources immédiates de Gratien', RDC, 48 (1998), 233–235 .
Laurent, V., 'L'oeuvre canonique du Concile in Trullo (691–692), source primaire du droit de l'Église Orientale', *Revue des Études Byzantines* 25 (1965), 7–41.
Lawrence, C. H., 'Origins and Development of Clerical Celibacy,' *Clergy Review* (1975), 138–146.
Le Bras, G., *Institutions ecclésiastiques de la Chrétienté Médiévale,* (Paris 1959).
Le Bras, G., Lefebvre, C., and Rambaud, J., *L'Age Classique 1140–1378* (Paris 1965).
Lemerle, P., *Byzantine Humanism: The First Phase* (Canberra 1986).
Lettenbauer, W., 'Eine lateinische Kanonensammlung in Mähren im 9. Jahrhundert', *Orientalia Christiana Periodica* 18 (1952), 246–269.
Ligier, L., *Il Matrimonio* (Rome 1988).
Limouris, G., 'L'Oeuvre canonique de Denys le Petit', RDC, 38 (1988) 142.
Maassen, F., *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande,* I, *Die Rechtssammlungen bis zur Mitte des 9. Jahrhunderts* (Graz 1870, repr. Graz 1956).
Maccarone, M., *Vicarius Christi: Storia del titolo papale* (Rome 1952).
Mackin, T., *What is Marriage?* (New York 1982).
Macrides, Ruth, 'Nomos and kanon on paper and in court', R. Morris (editor), *Church and People in Byzantium* (Birmingham 1988), 61–85.

—, 'Perception of the Past in the twelfth-century canonists', N. Oikonomides (editor), *Byzantium in the Twelfth Century* (Athens 1991), 589–560.

Magdalino, Paul, *The Empire of Manuel I Komnenos 1143–1180* (Cambridge 1993).

—, 'Constantinople and the ἔξω χῶραι in the Time of Balsamon', in N. Oikonomides (editor), *Byzantium in the 12th Century* (Athens 1991), 179–197.

Markus, R. A., *Gregory the Great and his World* (Cambridge 1997).

Martinez Diez, G., *Coleccion Canonica Hispana,* 4 vols (Madrid 1966–1982).

McNeill, T. and Gamer, H. M., *Medieval Handbooks of Penance* (New York 1990).

Meijer, J., *A Successful Council of Union. A Theological Analysis of the Photian Synod of 879–880* (Thessaloniki 1975).

Ménard, E., *L'Ecclésiologie Hier et Aujourd'hui* (Paris 1966).

Messini, C., 'Postille sulla biografia del *Magister Gratianus*, padre del diritto canonico', *Apollinaris* 54 (1981) 509–537.

Meyendorff, John, *Byzantine Theology. Historical Trends and Doctrinal Themes* (New York 1983).

—, *Imperial Unity and Christian Divisions. The Church 450–680* (New York 1989).

Meyvaert, Paul, 'Diversity within Unity, A Gregorian Theme', *Heythrop Journal* 4 (1963), 141–162.

Milaš, N., *Das Kirchenrecht der morgenländischen Kirche* (Mostar 1905).

Montgomery, J. A., *The History of Yahb Allaha III, Nestorian Patriarch, and of his Vicar, Bar Sauma, Mongol Ambassador to the Frankish Courts* (New York 1927).

Moorhead, John, *Theoderic in Italy* (Oxford 1992).

Mordek, H., 'Codices Pseudo-Isidoriani: Addenda zu dem gleichnamigen Buch von Schafer Williams', *Archiv für Katholisches Kirchenrecht,* 147 (1978), 471–478.

Morelli, Luciano, *Storia del Diritto Canonico* (Turin 1992).

Morris, C., *The Papal Monarchy* (Oxford 1989).

Mortimer, R. C., *Western Canon Law* (London 1953).

Müller, W. P., *Huguccio. The Life, Works, and Thought of a Twelfth-Century Jurist* (Washington 1995).

Munier, C., *Les sources patristiques du droit de l'Église du VIIIe au XIIIe siècle* (Mulhouse 1957).

Munier, J., *Concilia Africae A. 345 – A. 425,* (Turnhout 1974).

Mynors, R. A. B. (editor), *Cassiodori Senatoris Institutiones* (Oxford 1963).

Nallino, C. A. 'Il Diritto musulmano nel Nomokanone siriaco cristiano di Barhebreo', M. Nallino (editor), *Raccolta di Scritti Editi e Inediti* (Rome 1942), vol. IV, 214–277.

Nedungatt, G. and Featherstone M. (editors), *The Council in Trullo Revisited* (Rome 1995).

Noonan, Jr., J. T., 'Gratian slept here: The Changing Identity of the Father of the Systematic Study of Canon Law', *Traditio* 35 (1979), 145–172.

Obolensky, Dmitri, 'The Empire and its Northern Neighbours, 565–1018', *The Cambridge Medieval History,* vol. IV, Part I (Cambridge 1966). 492ff.

—, *The Byzantine Commonwealth. Eastern Europe, 500–1453* (London 1971).

—, *Byzantium and the Slavs* (New York 1994).

Ohme, Heinz, *Das Concilium Quinisextum und seine Bischofsliste: Studien zum Konstantinopolitan Konzil von 692* (Berlin and New York 1990).

—, 'Begegnung zwischen Ost und West in den kanones des Concilium Quinisextum'. R. Coppola (editor), *Atti del Congresso Internazionale: Incontro fra Canoni d'Oriente e d'Occidente* (Bari 1994), vol. 2,101–122.

—, 'Die sogenannten "antirömischen Kanones" des Concilium Quinisextum (692) – Vereinheitlichung als Gefahr für die Einheit der Kirche', G. Nedungatt and M. Featherstone (editors), *The Council in Trullo Revisited* (Rome 1995), 307–321.

Olšr, Giuseppe, 'La vita e l'opera dei SS. Cirillo e Metodio', G. Olšr (editor), *Cirillo e Metodio. I Santi Apostoli degli Slavi* (Rome 1964), 31–49.

Örsy, Ladislaus, 'The Development of the Concept of Protos in the Ancient Church', *Kanon* 9 (1989), 83–97.

Ortiz de Urbina, I., 'Storia e cause dello schismo della Chiesa di Persia', *Orientalia Christiana Periodica,* 3 (1937), 456–485.

Pacaut, M., *Alexandre III* (Paris 1956).

Papastathis, C. K., *L'oeuvre législative de la mission Cyrillo-Méthodienne en Grande Moravie* (Thessaloniki 1978).

Payne Smith, J., *A Compendious Syriac Dictionary* (Oxford 1957).

Pelliot, P. *Recherches sur les chrétiens d'Asie Centrale et d'Extreme-Orient,* II, 2, *La stele de Si-ngan-fu.* Edited by J. Dauvillier and A. Guillaumont (Paris 1984).

Peri, Vittorio, 'La Pentarchia: Istituzione Ecclesiale (IV–VII sec) e Teoria Canonico-Teologica', *Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo* (Spoleto 1988), 207–318.

—, 'Il mandato missionario e canonico di Metodio e l'ingresso della lingua slava nella liturgia', *Lo Scambio Fraterno tra le Chiese. Componenti storiche della comunione* (Vatican 1993), 247–363.

Pheidas, V.,'Primus inter pares,' *Kanon* 9 (1989) 181–188.

Phillips, G., *The Doctrine of Addai, the Apostle* (London 1856).

Pithoeus, F. (editor), *Codex Canonum veteris Ecclesiae Romanae* (Paris 1609).

Pollock, F. and Maitland, F. W., *The History of English Law* (Cambridge 1968).

Pospishil, V. J., *Ex Occidente Lex* (New Jersey 1979).

Putman, Hans, *L'Église et l'Islam sous Timothée I. Édition du dialogue entre Timothée et le calif al-Mahdi* (Beyrouth 1975).

Reynolds, P. L., *Marriage in the Western Church. The Christianization of Marriage During the Patristic and early Medieval periods,* (New York 1994).

Řezáč, J., 'Chiesa e Stato in Oriente', *Ius Populi Dei. Miscellanea in Honorem R. Bidagor* (Rome 1972), 255–279.

Roberson, R., *The Eastern Christian Churches. A Brief Survey* (Rome 1999).

Rossabi, M., *Voyager from Xanadu: Rabban Maura and the First Journey from China to the West* (Tokyo – New York – London 1992).

Rousseau, O., 'Divorce and Re-marriage: East and West', *Concilium,* vol. 4, no. 3 (1967), 57–69.

Runciman, S., *The Eastern Schism* (Oxford 1955).

Saeki, P. Y., *The Nestorian Monuments in China* (Tokyo 1937).

Salachas, Dimitri, 'La Normativa del Concilio Trullano commentata dai canonisti bizantini del XII secolo', *Oriente Cristiano* 2–3 (1991) 3–103.

Schmid, H. F., *Die Nomokanon-übersetzung des Methodius. Die Sprache der kirchenslavischen Übersetzung der Synagoge des Johannes Scholasticus* (Leipzig 1922).

Schoell, R. and Kroll, G. (editors), *Corpus Iuris Civilis. Volumen Tertium. Novellae* (Dublin/Zürich 1972).

Schulte, J. F., *Die Geschichte der Quellen und Literatur des canonischen Rechts,* 3 volumes (Stuttgart 1875–1880; repr. Graz 1956).

Selb, W., *Zur Bedeutung des syrisch-römischen Rechtsbuches* (Munich 1964).

—, *Orientalisches Kirchenrecht, I. Die Geschichte des Kirchenrechts der Nestorianer,* (Vienna 1981).

—, *Orientalisch Kirchenrecht II. Die Geschichte des Kirchenrechts der Westsyrer* (Vienna 1989).

Ševčenko, Ihor, *Byzantium and the Slavs in Letters and Culture* (Harvard – Naples 1991).

Simon, Dieter, '*Princeps legibus solutus*: die Stellung des byzantinischen Kaisers zum Gesetz', D. Norr and D. Simon (editors), *Gedächtnisschrift für Wolfgang Kunkel* (Frankfurt 1984), 449–492.

Smalley, B., *The Study of the Bible in the Middle Ages* (Oxford 1952).

Smith, J. A. Clarence, *Medieval law teachers and writers, civilian and canonist* (Ottawa 1975).

Somerville, R. and Brasington, B. C. (editors), *Prefaces to Canon Law Books in Latin Christianity. Selected Translations 500–1245* (Yale 1988).

Southern, R. W., *Scholastic Humanism and the Unification of Europe. Volume I. Foundations* (Oxford 1995).

Spiteris, J., *La Critica Bizantina del Primato Romano nel secolo XII* (Rome 1979).

Stephanou, P., 'Deux conciles, deux ecclésiologies? Les conciles de Constantinople en 869 et en 879', *Orientalia Christiana Periodica,* vol. 39 (1973), 363–407.

Stevens, G. P., *De Theodoro Balsamone. Analysis Operum ac Mentis Iuridicae* (Rome 1969).

Stewart, J., *Nestorian Missionary Enterprise: History of a Church on Fire* (Edinburgh 1928).

Stickler, A., *Historia Iuris canonici Latini, I. Historia Fontium* (Rome 1950).

Stolte, B., 'The Past in Legal Argument in the Byzantine Canonists of the Twelfth Century', N. Oikomenides (editor), *Byzantium in the Twelfth Century* (Athens 1991), 199–210.

Tachiaos, Anthony-Emil, N., *Cyril and Methodius of Thessalonica. The Acculturation of the Slavs* (New York 2001).

Tanner, N. (editor), *Decrees of the Ecumenical Councils* (London and Washington 1990).

Thomson, R. W., *The Lawcode [Datastanagirk] of Mxit'ar Goš* (Amsterdam 2000).

Tierney, B., *Foundations of the Conciliar Theory. The Contribution of the Medieval Canonists from Gratian to the Great Schism.* Second enlarged edition (Leiden/New York 1998).

Troickij, S., 'Apostle of the Slavs, St Methodius as canonist', (Apostol slavjanstva sv. Mefodij kak kanonist) *Žurnal Moskovskoj Patriarchii* (Moscow 1958), vol. 3, 38–57.

Troïtzkij, S., 'Théocratie ou césaropapisme', *Messager de l'Exarchat du Patriarch Russe en Europe Occidentale,* 19 (1954), 165–177.

Turner, C. H., 'The Versio called *Prisca',* JTS, 30 (1929), 337–346.

Turrianus, F., *Adversus Magdeburgenses Centuriatores pro Canonibus Apostolorum et Epistolis Decretalibus Pontificum Apostolicorum. Libri Quinque* (Florence 1572).

Ullmann, W., *Law and Politics in the Middle Ages* (London 1975).

—, 'Donation of Constantine', NCE, vol. 4 (1967), 1000–1001.

Vaillant, A.,'Une homélie de Méthode', *Revue des Études Slaves* 23 (1947), 34–47.

Van Bochove, T. E., *To Date and Not to Date. On the Date of Byzantine Law Books* (Groningen 1996).

Van Cranenburgh, H., *La Vie Latine de Saint Pachome,* (Brussels 1969).

Van der Wal, N. and B. H. Stolte (editors), *Collectio Tripartita. Justinian on Religious and Ecclesiastical Affairs* (Groningen 1994).

Van Hove, A., *Prolegomena ad Codicem Iuris Canonici* (Mechelen – Rome 1945).

—, 'Quae Gratianus contulit methodo scientiae canonicae', *Apollinaris* 21 (1948), 12–24.

Vasica, J., 'Origine cyrillo-méthodienne du plus ancien code slave dit Zakon Sudnyi Ljudem', *Byzantinoslavica* 12 (1951), 154–174.

Vasil', Cyril, *Fonti Canoniche della Chiesa Bizantina-Slava nelle Eparchie di Mukačevo e Prešov a confronto con il Codex canonum Ecclesiarum Orientalium* (Rome 1996).

Vinogradoff, P., *Roman Law in Medieval Europe* (Oxford 1961).

Vlasto, A. P., *The Entry of the Slavs into Christendom* (Cambridge 1970).

Vööbus, A., *Syrische Kanonessammlungen, I: Westsyrische Originalurkunden,* 1/B, *Corpus Scriptorum Christianorum Orientalium* 317 (Louvain 1970).

—, *The Synodicon in the West Syrian Tradition, I* (Louvain 1975).

— (editor), *The Canons Ascribed to Maruta of Maipherqat and related sources. Corpus Scriptorum Christianorum Orientalium* (Louvain 1982).

—, *The Syro-Roman Lawbook. I: The Syriac Text with an Introduction* (Stockholm 1982).

—, *The Syro-Roman Lawbook II* (English translation) (Stockholm 1983).

Wallis Budge, E. A., *The Monks of Kublai Khan Emperor of China or the History of the Life and Travels of Rabban Sawma Envoy and Plenipotentiary of the Mongol Khans to the Kings of Europe, and Markos who as Mar Yaballaha III became Patriarch of the Nestorian Church of Asia* (London 1928).

Watt, J. A., 'The Use of the Term *Plenitudo Potestatis* by Hostiensis', *Proceedings of the Second International Congress of Medieval Canon Law* (Vatican 1965).

Weigand, R., 'Chancen und Probleme einer baldigen kritischer Edition der ersten Redaktion des *Dekrets* Gratians', BMCL, 22 (1998), 53–75

Wensink, A. J., *Bar Hebraeus's Book of the Dove together with some chapters from his Ethicon* (Leiden 1919).

Werckmeister, J., 'Les études sur le Décret de Gratien: Essai de bilan et perspective', RDC 48 (1998), 363–379.

—, 'Les deux versions du De Matrimonio de Gratien', RDC 48 (1998), 301–316.

Williams, S., *Codices Pseudo-Isidoriani. Monumenta Iuris Canonici*, Series C (New York 1971).

Winroth, A, *The Making of Gratian's Decretum* (Cambridge 2000).

Žužek I., *Kormčaja Kniga. Studies on the Chief Code of Russian Canon Law* (Rome 1968).

—, 'The Determining Structure of the Slavic *Syntagma of Fifty Titles*', *Orientalia Christiana Periodica* 33 (1967), 139–160.

—, *Understanding the Eastern Code* (Rome 1997).

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